



Community Development Department
BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

January 7, 2016

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

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

REQUESTS

2. **Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)** – Lot 4B, Block 1, Meadowlark Commercial 6th Addition (4600 North 19th Street).

Owner / Applicant: Sky 19 Development, LLC

Board Action: approve continue table deny

3. **Variance from Section 14-03-05 of the City Code of Ordinances (Supplementary Provisions)** – Lot 18, Block 3, Sattler's Sunrise Addition (4813 Kost Drive).

Owner / Applicant: Bryan Binstock

Board Action: approve continue table deny

4. **Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)** – Part of Block 2, Casey's Commercial Park (1401 East Interchange Avenue).

Owner / Applicant: Dale Zimmerman

Board Action: approve continue table deny

OTHER BUSINESS

5. **Bylaws of the Board of Adjustment**

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



ADJOURNMENT

6. **Adjournment.** The next regular meeting date is scheduled for February 4, 2016

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
December 3, 2015**

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

Members present were Jennifer Clark, Ken 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, Jason Hammes – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chairman Marback called for approval of the minutes of the November 5, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Ms. Clark to approve the minutes of the November 5, 2015, as presented. With Board Members Clark, Hoff, Marback and Seifert voting in favor, the minutes were approved.

Ms. Clark stated she has an indirect conflict with the following variance request as she is a member of the Bismarck Community Food Cooperative and that she will act on the request upon approval of a motion from the Board.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to allow Ms. Clark to remain on the Board of Adjustment as an active member for the following variance request. With Board Members Hoff, Marback and Seifert voting in favor, the motion was approved.

VARIANCES FROM SECTION 14-04-12(8) OF THE CITY CODE OF ORDINANCES (CG – COMMERCIAL DISTRICT)(REAR YARD) AND SECTION 14-04-12(6) OF THE CITY CODE OF ORDINANCES (CG – COMMERCIAL)(FRONT YARD) - THE EAST 130 FEET OF LOTS 1-6, BLOCK 73, ORIGINAL PLAT (711 EAST SWEET AVENUE)

Chairman Marback stated the applicants, Jerry and Renae Doan and Bismarck Community Food Cooperative, are requesting variances 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 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.

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 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 purpose and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following additional information:

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."

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.

Chairman Marback said he would like to address the request for the front yard variance first to bring the property into compliance with the zoning ordinance.

Chairman Marback opened the public hearing.

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

MOTION: A motion was made by Mr. Seifert to approve the variance to reduce the 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 for the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue), based on the need for the property to be brought into compliance as the building is already existing. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted.

Chairman Marback asked for comments on the request for a variance from the rear yard setback requirement.

Paul Breiner, Matrix Design, said the variance to eliminate the rear yard setback is needed in order to install a loading dock to accommodate the delivery needs of the facility. He said there is a transformer in place on the side of the building that they need to work around, so placing the loading dock addition where they have proposed would allow truck to maneuver up to the building. He said deliveries would be twice a day, each delivery taking approximately 20-30 minutes.

Mr. Hoff asked what the hardship is with this request.

Mr. Breiner explained that they are restricted to the proposed location because placing it anywhere else would force delivery trucks to cross the property line and there is also an overhang on the building to avoid. He said the existing dock is very small and not sufficient for the food cooperative.

Ms. Clark asked if the original plan shown when a parking variance was requested in April reflected a loading dock.

Mr. Breiner said those plans originally provided were conceptual and there would have been issues with keeping the existing loading dock due to the existing electrical transformer and difficult access to the delivery door.

Chairman Marback opened the public hearing.

Tyler Demars, Bismarck Community Food Cooperative President, said the loading dock was discussed with staff in July and there seemed to be some confusion regarding the setback requirements. He said they are trying to open as soon as possible so approval of this variance would be very much appreciated.

Mr. Hoff asked if the loading dock will be at ground level or raised.

Mr. Breiner said delivery trucks would back in with the option to use a scissor lift and forklift and the dimensions of the loading dock would be six feet by eight feet.

Ms. Clark asked if the previous loading dock was also encroaching on the west side setback.

Mr. Breiner said it was just a small ramp to the door and the original ramp has already been removed, as well as some asphalt, in order to prepare for whatever it is they might need to do to accommodate delivery needs.

MOTION: A motion was made by Mr. Hoff to approve the variance 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 on the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue), based on the unique characteristics of the parcel and the existing electrical transformer box. The motion was seconded by Mr. Seifert 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 discussion of the bylaws of the Board of Adjustment will take place at the next meeting.

Ms. Clark said she did provide some suggestions to Planning staff if anybody would like to see them so they can be acted on at the next meeting.

Ms. Wollmuth said she will distribute Ms. Clark's suggestions prior to the next meeting of the Board of Adjustment.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:25 p.m. to meet again on January 7, 2016.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

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| BACKGROUND: | |
| Title: 4600 North 19 th Street (Off-Street Parking and Loading) (Lot 4B of Lot 4, Block 1, Meadowlark Commercial Sixth Addition) | |
| Status: Board of Adjustment | Date: January 7, 2016 |
| Owner(s): Sky 19 Development, LLC | Engineer: Wenck Associates |
| Reason for Request: Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces for building permitted for retail uses and under construction as a multi-use building to eighty-seven (87) off-street parking spaces. | |
| Location: In east Bismarck, adjacent to Hay Creek, west of Channel Drive along the north side of East Rosser Avenue. | |
| ADDITIONAL INFORMATION: | |
| <p>1. The City of Bismarck requires approval of a site plan for all new commercial projects prior to issuing building permits for the development of the site. The review process involves reviews from multiple city departments and divisions including the Building Inspections Division and Planning Division. A site plan was submitted for review for a single story 16,900 square foot retail facility with eighty-seven (87) off-street parking spaces in August 2015 (a copy of the site plan application is attached). The proposed retail facility required a total of eighty-five (85) off street parking spaces. However, during the review of the site plan it was discovered that the proposed building would be separated into two tenant spaces with one of the spaces being used for a fitness center (Anytime Fitness) with a separate 3,000 square foot seasonal outdoor workout area and the other as a retail use. The gym and the outdoor workout area are considered to be assembly uses. Parking for an assembly use is required to be provided at a rate of one space per each 60 square feet of gross floor area per Section 14-03-10 of the City Code of Ordinances.</p> <p>According to correspondence with the applicant's consulting engineer (Wenck Associates) the assembly use portions of the building were removed from the request in order to meet the parking requirement of the originally submitted retail use building (a copy of the correspondence is attached). After the assembly use portions of the building were removed from the request, the site plan was approved and a building permit to construct the proposed retail use building was issued. The building is currently under construction and the foundation has been poured. The applicant has reconsidered the uses in the building and has proposed to add the assembly uses mentioned above back into the project. This addition would increase the required off-street parking spaces to two-hundred twenty-eight (228) off-street parking spaces. The applicant is requesting a variance to reduce the required number of off-street parking spaces for the new mixed use building from two-hundred twenty-eight (228) off-street parking spaces to eighty-seven (87) off-street parking spaces.</p> | |
| APPLICABLE PROVISION(S) OF ZONING ORDINANCE: | |
| <p>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."</p> | |
| <i>(continued)</i> | |

2. Section 14-03-10 (13) of the City Code of Ordinances (Off-Street Parking and Loading)(Mixed Uses) states, "In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use." According to the site plan submitted with the application the building is a mixed use building with assembly uses and retail uses.
3. Section 14-03-10(1)(g) of the City Code of Ordinances (Off-Street Parking and Loading)(Places of Public Assembly) states, "Places of public assembly, including private clubs, lodges and fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks dance halls, bowling alleys, sport arenas, stadiums, gymnasiums, amusement parks, zoos, racetracks, fairgrounds, circus grounds, community centers, libraries, museums, and all other similar places of public assembly: One space for each sixty (60) square feet of gross floor area." According to the information submitted with the application, the portion of the building identified as Anytime Fitness is 8,000 square feet, which would require one hundred thirty-three (133) off-street parking spaces. The portion of the site used for seasonal outdoor workout area is 3,000 square feet, which would require fifty (50) off-street parking spaces. At this time, the applicant is proposing that the remaining 8,900 square feet of the building be retail uses which would require forty-five (45) off-street parking spaces. The total off-street parking spaces required for the building with the uses as proposed is two hundred twenty-eight (228) off-street parking spaces. According to the site plan submitted with the application, eighty-seven (87) off-street parking spaces have been provided on site.

FINDINGS:

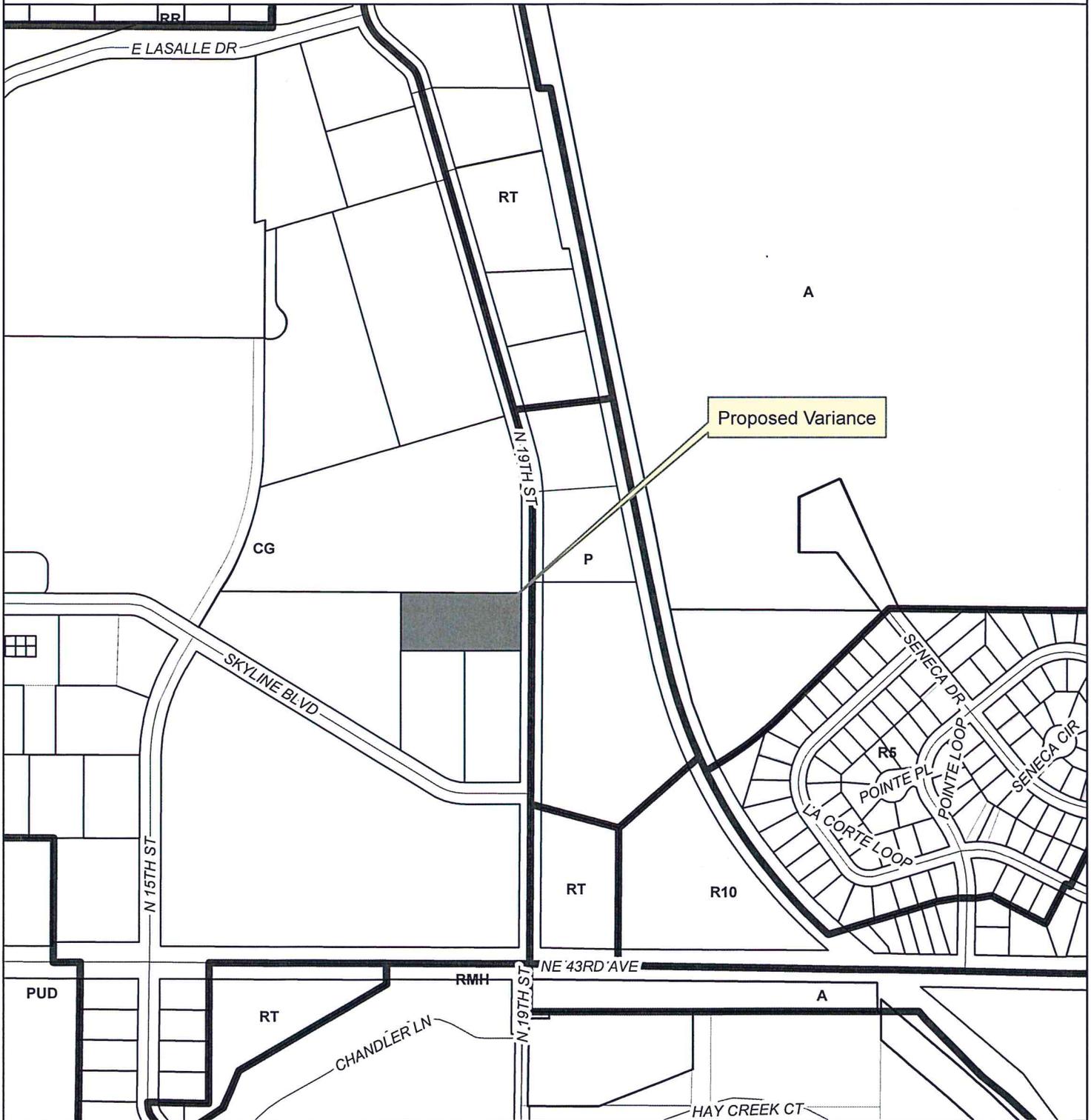
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CG - Commercial zoning classifications.
2. The hardship is not caused by the provisions of the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

RECOMMENDATION:

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

Proposed Variance

Lot 4B of Lot 4, Block 1, Meadowlark Commercial Sixth Addition



December 7, 2015 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



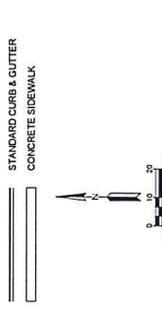
GENERAL LEGEND

1603

- EXISTING CONTOURS
- EXISTING BITUMINOUS PAVEMENT
- EXISTING CONCRETE PAVEMENT
- EXISTING CURB AND GUTTER
- EXISTING GAS LINE
- EXISTING SANITARY SEWER
- EXISTING WATERMAIN
- EXISTING STORM SEWER
- EXISTING EASEMENT
- EXISTING UNDERGROUND TELEVISION
- PROPERTY LINE
- EXISTING SANITARY MANHOLE
- EXISTING HYDRANT
- EXISTING WATER VALVE

SITE PLAN LEGEND

- BUILDING SETBACKS
- STANDARD CURB & GUTTER
- CONCRETE SIDEWALK



- KEY LEGEND:**
- 1) PARKING STALL 5.0' x 10.00'
 - 2) ADA COMP. STALL 5.0' x 10.00'
 - 3) ADA COMP. STALL 8.0' x 10.00'
 - 4) ADA COMP. STALL 8.0' x 10.00'

GENERAL NOTES

- IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY ALL DIMENSIONS AND CONDITIONS OF THE EXISTING SITE. APPROXIMATE DIMENSIONS AND CONDITIONS ARE GIVEN FOR INFORMATION ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE EXACT LOCATIONS OF THE UTILITIES.
- STREET DIMENSIONS ARE TO BACK OF CURB, WHERE APPLICABLE.
- STREET DIMENSIONS TO BACK OF CURB, WHERE APPLICABLE.

BUILDING NOTES

- 1. GUTTER RADIUS MEASUREMENTS ARE TO BACK OF CURB.

SITE NOTES

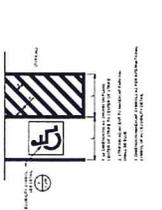
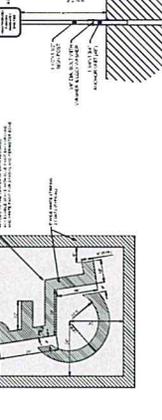
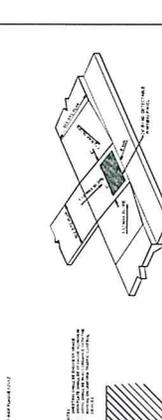
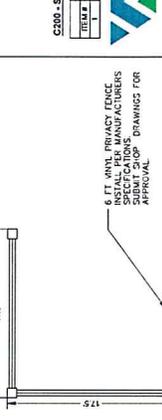
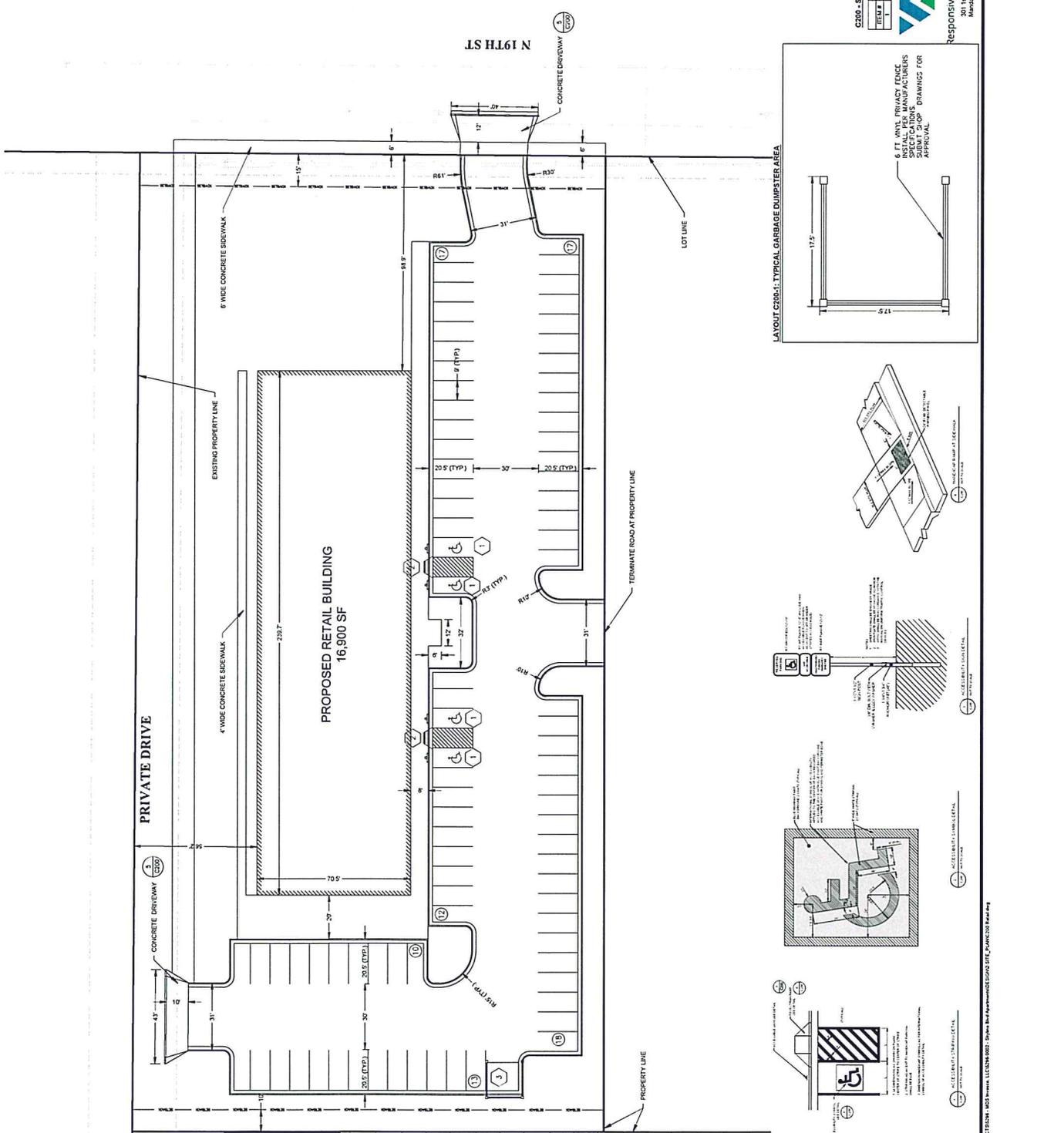
- 1. TOTAL SITE AREA: 16,900 SF

PARKING REQUIREMENTS

- 1. 65 PARKING STALLS REQUIRED
- 1. 1 SPACE PER 100 SF OF GROSS FLOOR AREA
- 1. 2 ADA COMPLIANT SPACES
- 1. 2 HANDICAP ACCESSIBLE SPACES

C200 - SITE PLAN ESTIMATE QUANTITIES

| ITEM # | DESCRIPTION | QTY | UNIT |
|--------|------------------------|-----|------|
| 1 | 1" VINYL PRIVACY FENCE | 50 | LF |





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

1. Property Address or Legal Description: 4600 N 19th Street // Lot 4B, Block 1, Meadowlark Commercial 6th Addition
2. Location of Property: City of Bismarck Extraterritorial Area (ETA)
3. Type of Variance Requested: Reduction in Required Parking - Anytime Fitness
4. Applicable Zoning Ordinance Chapter/Section: 14-04-12: CG Commercial District // 14-03-10: Off-Street Parking & Loading
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

The desired use of approximately 8000-SF of the retail facility currently being constructed is an Anytime Fitness facility. Currently, City Zoning Ordinances do not have a definition for a Health Club or Fitness Facility, and considers such facilities a "Place of Public Assembly", similar to that of a Convention Hall, Auditorium, Gymnasium, etc.

The parking regulations for a "Place of Public Assembly" specifies a parking ratio of 1 Space per 60 Square Feet (SF) of usable Facility Space. Since the area is currently zoned CG - Commercial, the building and property have been laid out with the expectation of a 1 Space per 200 SF expectation per the parking required for the CG - Commercial Zoning, therefore proper parking is not physically possible with the required 1:60 parking ratio for a "Place of Public Assembly". It is our understanding that the Community Development Staff for the City of Bismarck is currently reviewing a definition of "Health Club or Fitness Facilities" to include in City Ordinances, and are anticipating a parking ratio requirement of 1:300. However, with an expected Building Completion/Occupancy date of April 1st, 2016, Staff has acknowledged that the Ordinance to include this definition may not be passed by City Council until May 2016, therefore not allowing Anytime Fitness to receive a Certificate of Occupancy until that time.

With supporting documentation (see attached), it is the desire of the applicant to seek a variance to require 1 Space per 300 SF of facility space.

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

The building is an Approximate 16,900 SF Retail Facility (Strip-Mall), with proposed occupancy being 5 tenants, meeting the current Retail Parking Requirement of 1 Space per 200 SF. Due to a lack of definition, therefore defaulting the parking requirement to a 1 Space per 60 SF ratio for a "Place of Public Assembly, Anytime Fitness would not be able to occupy the facility as it is currently being constructed.

As Corporate Anytime Fitness Standards call for a 1 Space per 500 SF of facility space, we are asking the Board of Adjustment to consider a 1 Space for 300 SF of Facility Space, to match what is currently under consideration with City Staff (as previously mentioned). Please see the attached information provided by Corporate Anytime Fitness for their required standards.

Also attached are excerpts from other regional cities zoning ordinances for Health Club and Exercise Facilities, as well as Club Usage Statistics for the Williston and Dickinson Anytime Fitness locations. The regional city ordinances as adopted require a parking ratio anywhere from 1:200 to 1:500, as it has been recognized by many other communities that a Health Club or Fitness Facility such as Anytime Fitness simply does not require the stringent standards set forth by a "Place of Public Assembly". Also, within the usage statistics, it can be seen that a required parking ratio of 1:300 will be sufficient for the facility to operate without placing undo hardship on surrounding businesses or facilities.

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

The adjustment would allow a Anytime Fitness to occupy the facility, since the current zoning and parking requirements which lack definition of a Health Club or Fitness Facility. With an 8000 SF indoor facility, a parking requirement of 1 Space per 300 SF (A total of 27 required parking spaces) of total facility space would allow proper parking and space utilization, while meeting all other requirements set forth by the City of Bismarck Zoning Ordinance (District Zoning Regulations, Landscaping/Greenspace, etc.) and Americans with Disabilities Act. The amount of spaces constructed for the retail space is 40 spaces (based on a 1:200 parking ratio), so the amount of parking provided on-site will not need to vary from what is currently constructed. Referencing the provided Usage Statistics for the Williston (10,375 SF Indoor Facility) and Dickinson (13,000 SF Indoor Facility with 3,000 SF outdoor patio/workout area) Anytime Fitness locations, the peak average usage is 25 Clients and 18 Clients, respectively. Per the Applicant (Franchisee of Anytime Fitness), the Clientèle for the Bismarck location is projected to be less than that of both of these locations.

With usages (projected and comparison) being equal to or less than the provided 40 Parking Spaces at a ratio of 1:300, it is the belief of both the Applicant and Engineer that the site is properly suited for such a parking requirement.



Community Development Department

December 28, 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, January 7, 2016, 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.

Dale Zimmerman, is requesting a variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces, located at the above mentioned property, to fifty-nine (59) off-street parking spaces on Part of Block 2, Casey's Commercial Park (1401 East Interchange Avenue).

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

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

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan



SITE PLAN AND PARKING LOT REVIEW APPLICATION AND CHECKLIST

PROJECT SUMMARY:

Project Name: SKY-19 PLAZA CENTER

New Construction Addition to Building New Parking Lot Addition to Parking Lot

Legal Description - Lot 4B Block 1 Subdivision MEADOWLARK COMMERCIAL 6TH ADDITION

Property Address: 4600 NORTH 19TH STREET -- MAY BE UPDATED POST LOT SPLIT

City/ETA Location: City ETA (Application fee & number of copies needed are based on location) Zoning District: CG

Existing Use of Property: VACANT LAND Proposed Use of Property: RETAIL FACILITY

Parcel Size (SF): 96,001 Building Footprint (SF): 16,900 Total Building (SF): 16,900

Number of Stories: 1 Total Number of Apartment Units: 2 Total Number of Bedroom Units: N/A

Type of Construction: STICK-FRAME (WOOD) Occupancy Classification: RETAIL/COMMERCIAL

Fire Protection Systems (specify type): SPRINKLER

Existing Parking Lot (SF): 0 Number of Existing Off-Street Parking Spaces: 0

Total SF for Parking: 35,165 Total Number of Off-Street Parking Spaces: 86

PROPERTY OWNER:

Name: MDS PROPERTIES, LLC/INVESCO HOLDINGS, INC Daytime Telephone Number: (701) 226-7661

Mailing Address: PO BOX 2135, BISMARCK, ND 58502-2135 C/O DAN SCHMALTZ

DEVELOPER (IF DIFFERENT THAN OWNER):

Name: CONSOLIDATED CONSTRUCTION COMPANY, INC. Daytime Telephone Number: (701) 557-3698

Mailing Address: 1355 AIRPORT ROAD, BISMARCK, ND 58504 C/O JAMES RENDLE

CONTACT PERSON (FOR PURPOSES OF PROCESSING THIS APPLICATION):

Contact Person: KEVIN G. NELSON, PE, PLS Name of Firm: WENCK ASSOCIATES, INC.

Mailing Address: 301 1ST STREET NE, SUITE 202, MANDAN, ND 58554

Telephone Number: (701) 751-3370 Fax Number: 751-3372 Email Address: KNELSON@WENCK.COM

The following information is required on all site plans submitted for approval.

| I. GENERAL INFORMATION | Applicant's Checklist | City Staff Checklist |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------|
| A. Set(s) - six (6) for City and eight (8) for ETA - of non-reduced sheets (minimum scale of 1" = 50'). If more than one sheet is submitted, all sheets must be numbered, be of the same size and include matchlines along with an index. | X | |
| B. Project summary information (must be the same as application form): - Name, address and telephone number of owner/developer - Name of proposed development - Legal description of property - lot, block, and addition - Address of property | X | |
| C. Name, address and telephone number of engineer, surveyor and architect. | X | |
| D. North direction indicator. | X | |
| E. Scale including both a graphic and a numeric scale (engineer's scale preferred) | X | |
| F. Date (original and all revisions) shown on all sheets. | X | |
| G. All dimensions, both linear and angular. Linear measurements should be expressed in feet and decimals of a foot. Angular land measurements should be expressed by bearings. Curved land measurements should be defined by radius, central angle, and arc distances. | X | |
| H. Datum used for elevations | X | |

| II. EXISTING CONDITIONS | Applicant's Checklist | City Staff Checklist |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------|
| A. Parcel boundary lines of the property with dimensions and area (platted dimensions) | X | |
| B. Location of any non-access control lines, with dimensions. | X | |
| C. Location, width and identification of existing easements (both public and private). | X | |
| D. Building setback dimensions. | X | |
| E. Existing topographical features, contour lines for slopes greater than seven percent, and existing drainage patterns. | X | |
| F. Existing buildings, structures, driveways (on-site with elevations and across adjacent public rights-of-way), parking and loading areas, outdoor storage areas, fire lanes, private sewage disposal systems and any other man-made features, dimensioned and clearly distinguished from proposed improvements. | X | |
| G. All adjacent and on-site streets, including dedicated right-of-way width, pavement widths, curb and gutter locations, sidewalks and curb ramps. | X | |
| H. Within and/or adjacent to property: existing municipal utilities including light poles, water and sewer mains, service lines, connections, curb stops and valves, manholes, hydrants, inlets, and any other stormwater facilities (location and size). | X | |
| I. The boundaries of any floodway, floodway fringe, 100-year floodplain, streams and/or wetlands. | X | |

| III. PROPOSED CONDITIONS | Applicant's Checklist | City Staff Checklist |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------|
| A. Proposed new and/or relocated municipal utilities including mains and service lines (location and size), connections, disconnections, curb stops and valves, manholes, hydrants (with distance to building), inlets and any other stormwater facilities (location and size), including sidewalk trench drains. | X | |
| B. Location of any relocated street lights. | X | |
| C. Limits of any proposed demolition. | X | |
| D. Proposed street cuts and any street land and/or sidewalk closures. | X | |
| E. Proposed buildings and structures shall indicate locations, footprints, entrances, area by floor, height and number of stories, finished floor elevation and distance of buildings from other buildings and/or property lines. The fire resistance of exterior walls, location and rating of fire walls, location of wall openings and the use of automatic fire suppression systems should be clearly indicated. Underground water fire lines shall have piping size included. | X | |
| F. Proposed driveways, including distance from lot lines, width at top, relationship to non-access control lines. Any proposed driveway closures. For rural roadway approaches, add the location and diameter of culverts. | X | |
| G. Proposed off-street parking areas, including dimensions, elevations, setbacks and number of spaces. List number of parking spaces provided and how calculated. | X | |
| H. Proposed sidewalks and/or trails, both on-site and within adjacent right-of-way, with locations and dimensions. Proposed crosswalk ramps at corner lots. | X | |
| I. Proposed fencing, if located across a drainage easement, and all proposed retaining walls (location and height). | X | |
| J. Dumpster (or any other solid waste handling facilities) location, size of dumpster (verify need with Public Works), dimensions of concrete pad (must be level and a minimum of 4" concrete), and any proposed screening labeled with height and material (there must be a 24" clear zone on all sides of pad and no overhanging structures, vegetation or utilities). If access to dumpster is not directly accessible from public right-of-way, a damage claim waiver is required before service can be started. | X | |
| K. Proposed fire access features, including location of hydrants, location and dimension of fire lanes (minimum width of 20 feet required when any portion of an exterior wall of the first story of the building is located more than 150 feet from Fire Department access) and height of any overhead obstructions. If the building is greater than 30 feet in height, a fire lane minimum width of 26 feet is required. An approved turn-around for dead-ends greater than 150 feet in length is required. A 45 foot turning radius is needed for adequate clearance for turns. A minimum vertical clearance of 13' 6" is needed to accommodate vehicles. | X | |
| L. Proposed contours lines for slopes greater than seven percent. | X | |
| M. Copy of recorded common use agreement if multiple-family, commercial, or industrial with separate ownership (common water, sanitary or drainage facilities; common access drives, lanes, and lots; access easement to backyard area). | X | |
| N. Trash enclosure screening material (specify material) | | PVC/VINYL |

A landscape plan is required for the construction of any principal commercial, industrial, institutional, or multi-family building with more than two units; for the installation of any parking area or the expansion of any existing parking area by five or more required off-street parking spaces; and for a change in the use of the property that requires rezoning to a more intensive zoning classification or a special use permit. Copies of the City's landscaping and screening ordinance can be obtained from the Community Development Department - Planning Division.

| IV. LANDSCAPE PLAN | | Applicant's Checklist | City Staff Checklist |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------|
| A. North point and scale. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| B. The boundary lines of the property with dimensions and area. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| C. The location of all driveways, parking areas, sidewalks, structures, utilities, or other features, both existing and proposed, affecting the landscaping of the site. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| D. The location, common name, scientific name, size and quantity of all existing trees, shrubs or other vegetation intended for use in meeting the requirements of the City's landscaping and screening requirements. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| E. The location, common name, scientific name, size and quantity of all proposed landscape materials. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F. The location and height of any proposed earthen berms, masonry fences, or other features used to meet the City's landscaping or buffer yard requirements | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| G. The location of any existing and/or proposed casements. | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| H. Street frontage (linear feet): | North <input type="text" value="0"/> East <input type="text" value="214"/> South <input type="text" value="0"/> West <input type="text" value="0"/> | | |
| I. Required street trees (quantity): | North <input type="text" value="0"/> East <input type="text" value="7"/> South <input type="text" value="0"/> West <input type="text" value="0"/> | | |
| J. Required perimeter parking lot trees (quantity): | North <input type="text" value="0"/> East <input type="text" value="0"/> South <input type="text" value="12"/> West <input type="text" value="0"/> | | |
| K. Required perimeter parking lot shrubs (quantity): | North <input type="text" value="0"/> East <input type="text" value="0"/> South <input type="text" value="60"/> West <input type="text" value="0"/> | | |
| L. Required interior parking lot trees (quantity): | | <input type="text" value="2"/> | <input type="checkbox"/> |
| M. Required interior parking lot shrubs (quantity): | | <input type="text" value="6"/> | <input type="checkbox"/> |
| N. Required area (in square feet) for interior landscape islands: | | <input type="text" value="0"/> | <input type="checkbox"/> |
| O. Buffer yard width (linear feet): | North <input type="text" value="0"/> East <input type="text" value="0"/> South <input type="text" value="0"/> West <input type="text" value="15"/> | | |
| P. Buffer yard length (linear feet): | North <input type="text" value="0"/> East <input type="text" value="0"/> South <input type="text" value="0"/> West <input type="text" value="217"/> | | |
| Q. Required buffer yard evergreen trees (quantity): | North <input checked="" type="checkbox"/> East <input checked="" type="checkbox"/> South <input checked="" type="checkbox"/> West <input type="text" value="27"/> | | |
| R. Required buffer yard shade trees (quantity): | North <input checked="" type="checkbox"/> East <input checked="" type="checkbox"/> South <input checked="" type="checkbox"/> West <input type="text" value="7"/> | | |
| S. Required buffer yard ornamental trees (quantity): | North <input checked="" type="checkbox"/> East <input checked="" type="checkbox"/> South <input checked="" type="checkbox"/> West <input type="text" value="9"/> | | |
| T. Required buffer yard shrubs (quantity): | North <input checked="" type="checkbox"/> East <input checked="" type="checkbox"/> South <input checked="" type="checkbox"/> West <input type="text" value="31"/> | | |
| U. Buffer yard fence material (if proposed): | | <input type="text" value="N/A"/> | |
| V. Opinion of cost for all required landscape materials. | | <input type="text" value="\$30K"/> | <input type="checkbox"/> |

A storm water management plan is required for all commercial and industrial projects and all residential developments with three or more units. The storm water management plan must be prepared and stamped by a professional engineer who is registered in North Dakota.

A storm water management plan waiver request may be made under the following conditions or as deemed appropriate by the City Engineer:

- The associated plat was approved within the past twenty four (24) months along with its storm water management plan containing an adequate level of detail to evaluate the site development and no significant changes occur to the storm water plan due to the proposed construction.
- The disturbed area is less than two thousand (2,000) square feet and construction will not significantly change drainage patterns or imperviousness.

An approved waiver of the storm water management plan by the City Engineer does not waive the storm water permit, permit fee and erosion and sediment control requirements.

The application for a storm water permit is separate from the storm water management plan submittal, but must be completed prior to site plan approval. However, the Storm Water Program Coordinator will not issue a storm water permit until the stormwater management plan has been reviewed and approved. The storm water permit application can either be submitted with the site plan or online at www.bismarck.org on the public works storm water page.

V. STORMWATER MANAGEMENT PLAN SUBMITTAL REQUIREMENTS

| I. Applicant* | Applicant's Checklist | City Staff Checklist |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------|
| A. Land owner(s) name (person, partnership, corporation, organization etc.) | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Contact person (for partnership, corporation or organization that is the registered agent authorized to conduct the business of the partnership, corporation or organization. | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Address | <input type="checkbox"/> | <input type="checkbox"/> |
| II. Location* | | |
| A. General Description | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Section, Range and Township | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Acreage | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Other | <input type="checkbox"/> | <input type="checkbox"/> |
| III. Existing Site Conditions and Characteristics* | | |
| A. Existing topography (general description of the site topography) | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Watershed information | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Stream delineation, designated wetlands or other public waters and their descriptions | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Existing stormwater facilities/features | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Soils and soil characteristics | <input type="checkbox"/> | <input type="checkbox"/> |

** Indicates items required for waiver requests along with criteria supporting the waiver.*

| III. Existing Site Conditions and Characteristics* (continued) | Applicant's Checklist | City Staff Checklist |
|-----------------------------------------------------------------------|------------------------------|-----------------------------|
|-----------------------------------------------------------------------|------------------------------|-----------------------------|

| | | |
|--------------------------------------------|--------------------------|--------------------------|
| F. Current ground cover conditions | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Current land use and zoning | <input type="checkbox"/> | <input type="checkbox"/> |
| H. Floodplain/Floodway/100 Year Floodplain | <input type="checkbox"/> | <input type="checkbox"/> |
| I. Other | <input type="checkbox"/> | <input type="checkbox"/> |

| IV. Construction Plan |
|------------------------------|
|------------------------------|

| | | |
|------------------------------------------------------|--------------------------|--------------------------|
| A. General description of the construction to occur* | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Construction schedule | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Preliminary erosion and sediment control plan | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Other | <input type="checkbox"/> | <input type="checkbox"/> |

| V. Storm Water Management Plan |
|---------------------------------------|
|---------------------------------------|

| | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| A. Final site conditions* | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Storm water design criteria | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Storm water facility design | <input type="checkbox"/> | <input type="checkbox"/> |
| 1. General management concepts including drainage patterns and tabular summary for the existing and proposed peak discharge flows for each sub watershed (2yr., 10yr. and 100 yr.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Design of permanent storm water features. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Calculated tabular hydraulic/hydrologic summary for each feature | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Analysis of proposed outlet adequacy | <input type="checkbox"/> | <input type="checkbox"/> |

| VI. Summary |
|--------------------|
|--------------------|

| | | |
|------------------------------------------|--------------------------|--------------------------|
| A. Fees (plan review fee and permit fee) | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Conclusions | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Compliance and certification (stamp) | <input type="checkbox"/> | <input type="checkbox"/> |

| VII. Drawings and Maps |
|-------------------------------|
|-------------------------------|

| | | |
|----------------------------------------------------------------------------|--------------------------|--------------------------|
| A. Location map* | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Existing site map (scaled such that all features and text are legible)* | <input type="checkbox"/> | <input type="checkbox"/> |

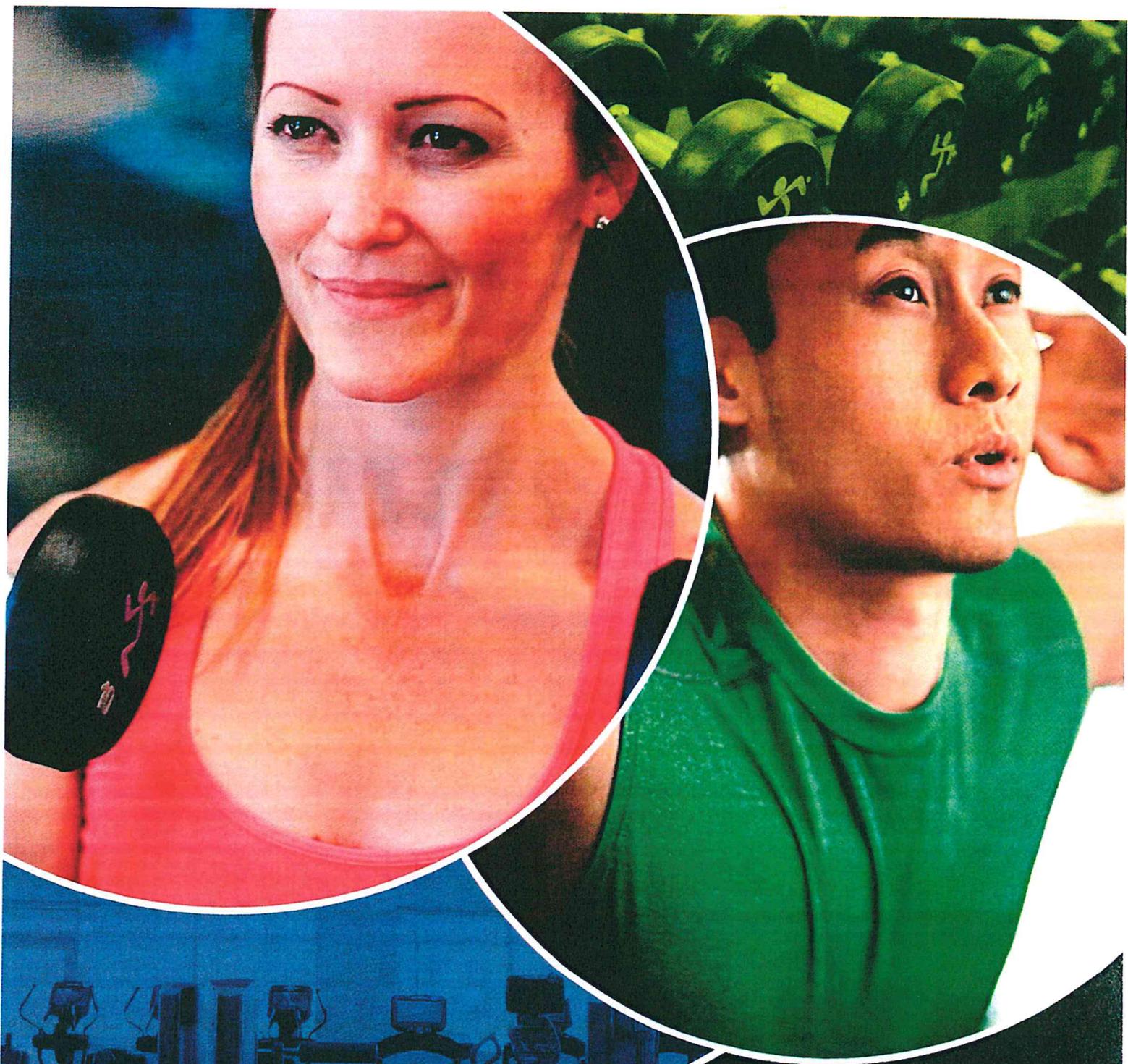
** Indicates items required for waiver requests along with criteria supporting the waiver.*

| Drawings and Maps (continued) | Applicant's Checklist | City Staff Checklist |
|---------------------------------------------------------------------------------|------------------------------|-----------------------------|
| C. Proposed site map (scaled such that all features and text are discernible)* | <input type="checkbox"/> | <input type="checkbox"/> |
| 1. North arrow, scale and datum | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Proposed final site conditions showing streets, lots and proposed structures | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Additional maps | <input type="checkbox"/> | <input type="checkbox"/> |

| |
|-------------------------------------------------------|
| VIII. Appendices (1 copy- PDF on CD preferred) |
|-------------------------------------------------------|

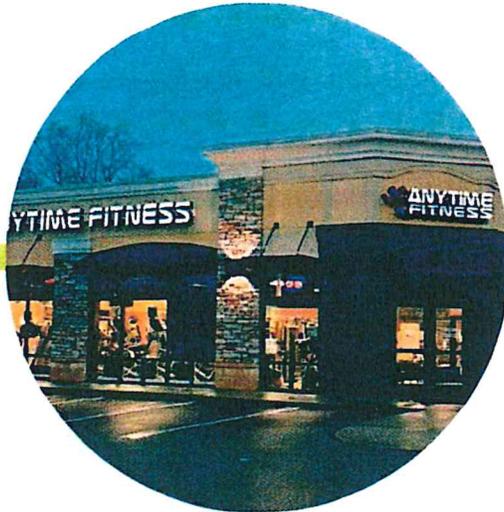
| | | |
|-----------------------------------------------------------------------------------|--------------------------|--------------------------|
| A. PDF copy of the storm water management report | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Hydrological calculations | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Hydraulic calculations | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Erosion and sediment calculations | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Model for sites larger than ten (10) acres or as requested by City Engineering | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Soils reports as required | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Other | <input type="checkbox"/> | <input type="checkbox"/> |

** Indicates items required for waiver requests along with criteria supporting the waiver.*



 **ANYTIME
FITNESS**

**Nearly 3,000 Gyms
and 2 Million Members**



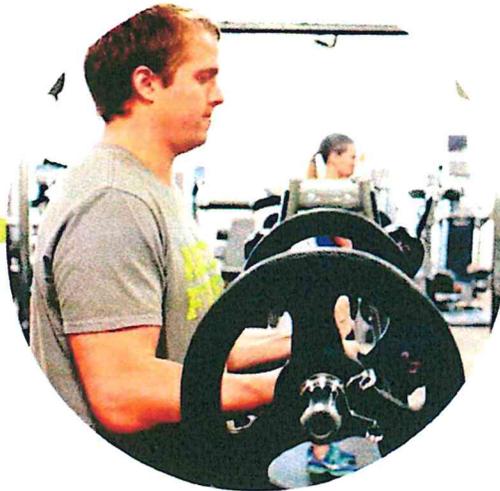
PERMITS AND ZONING

Many municipalities use terms like “gymnasium” or “health club” to define certain facilities for usage permit and/or zoning classification purposes. Issues may arise if those definitions presume that the applicant gym or health club is a large facility, occupying tens of thousands of square feet, serving thousands of members, and requiring dozens or hundreds of parking spaces.

Anytime Fitness clubs typically occupy less than 6,000 square feet, serve approximately 800 members, and require less than a dozen parking spaces. Thus, care should be taken so that appropriate usage permits and zoning classifications are applied.

We recommend using terms like “studio” or “boutique,” being that the customer profile, time spent in the facility, and foot-traffic are similar to that of a personal spa or salon.

To avoid unnecessary confusion or delays, these factors should be considered and discussed before a usage permit is completed and filed with municipal officials.

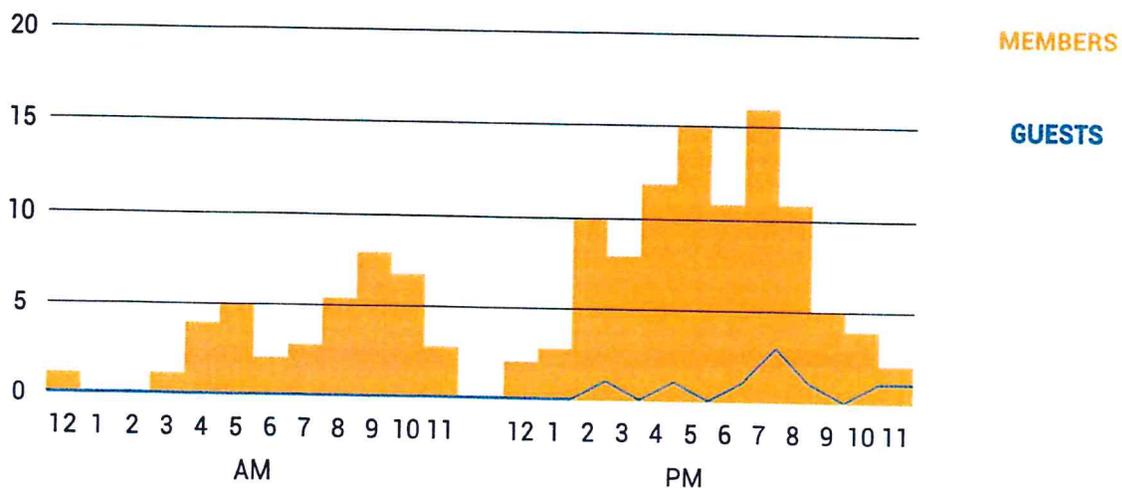


USAGE PATTERNS

Anytime Fitness provides round-the-clock convenience to accommodate the busy lifestyles of our members. Although most of our members workout between 8:00am and 9:00pm, it's important that clubs remain open 24-hours a day to meet the needs of nurses, police officers, and others who work unusual hours.

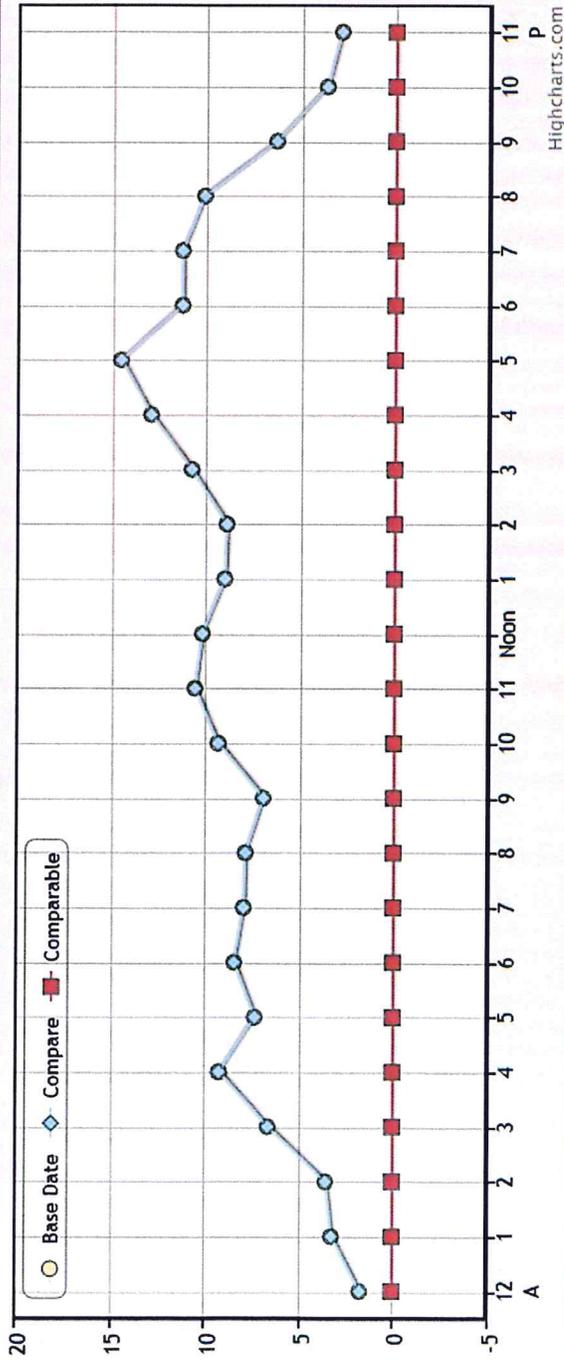
Our study concludes that relatively few members visit the clubs between 10:00pm and 5:00am. Thus, noise and traffic during nighttime hours are not an issue.

Because many of our members visit the clubs in pairs, arriving together, our clubs do not require many parking spaces – typically 10 or fewer – even during peak hours.



Club at a Glance - ANYTIME FITNESS DICKINSON

Usage (Average per Hour)



select a club ▾

779 | Dickinson, ND

Month March 2015

Compare To March 2015

Comparable Club Age Older than Five Ye ▾

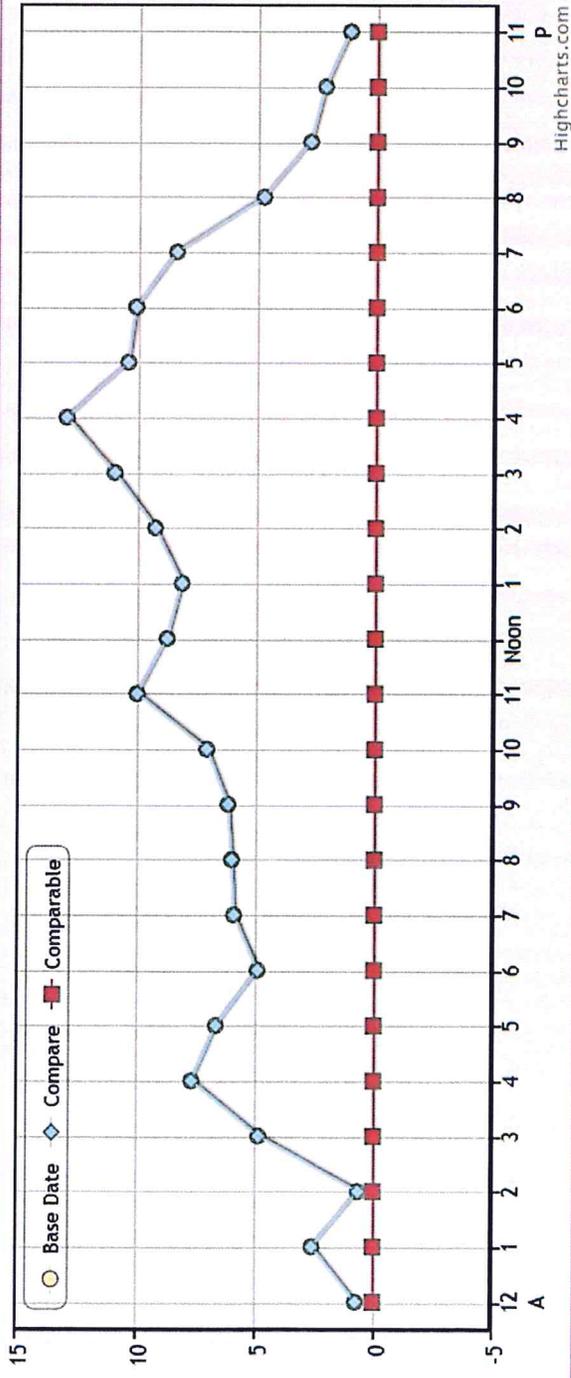
Update Stats

c2i photo

C2i

Club at a Glance - ANYTIME FITNESS DICKINSON

Usage (Average per Hour)



select a club ▾

779 | Dickinson, ND

Month July 2015

Compare To July 2015

Comparable Older than Five Ye
Club Age

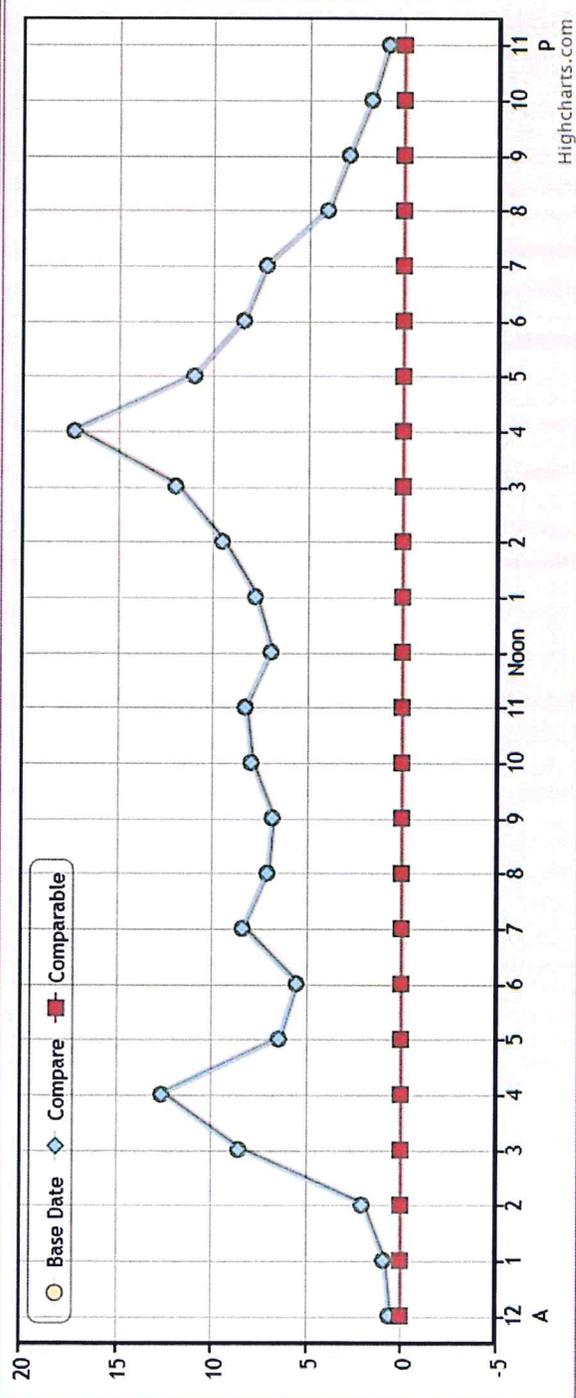
Update Stats

e2i photo

C2i

Club at a Glance - ANYTIME FITNESS DICKINSON

Usage (Average per Hour)



select a club ▾

779 | Dickinson, ND

Month

Compare To

Comparable Club Age

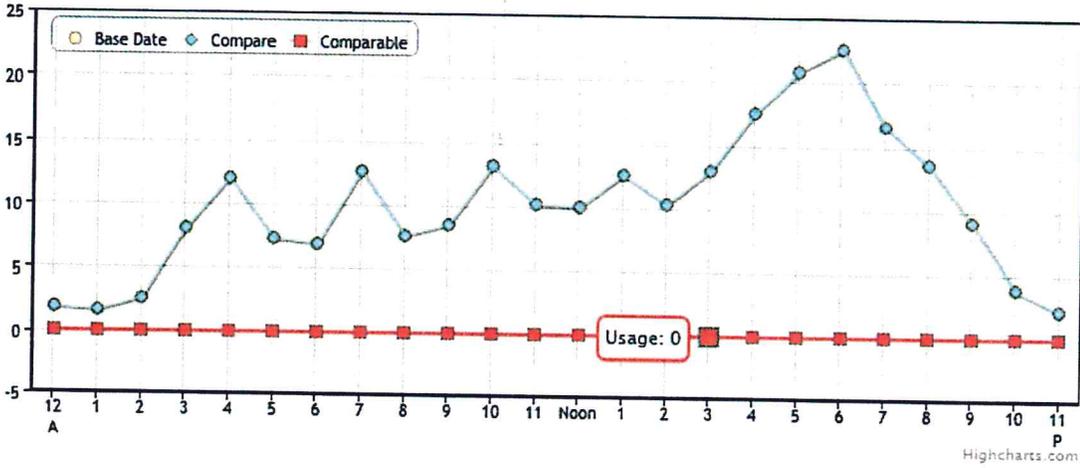
Update Stats

c2i photo

C2i

Dan Schmaltz

From: Lindsey Schafer <af.lindseys@gmail.com>
Sent: Friday, September 11, 2015 11:55 AM
To: Dan Schmaltz
Subject: Williston Usage (July/August)

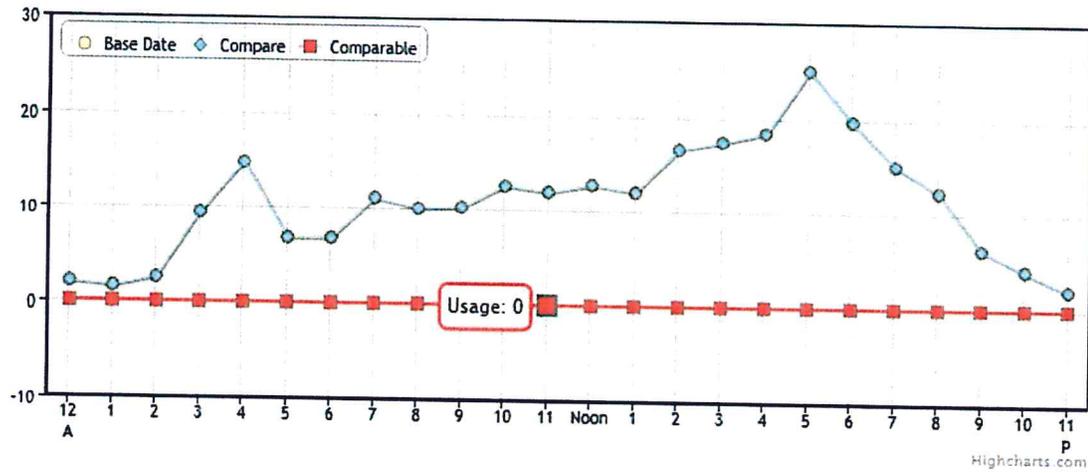


Usage (Average per Hour)

Base Date Compare Comparable 12 A 1 2 3 4 5 6 7 8 9 10 11 Noon 1 2 3 4 5 6 7 8 9 10 11 P -5 0 5 10 15 20 25 Usage: 0 Highcharts.com

Dan Schmaltz

From: Lindsey Schafer <af.lindseys@gmail.com>
Sent: Friday, September 11, 2015 11:53 AM
To: Dan Schmaltz
Subject: Williston Usage (May/June)



Usage (Average per Hour)

Base Date Compare Comparable 12 A 1 2 3 4 5 6 7 8 9 10 11 Noon 1 2 3 4 5 6 7 8 9 10 11 P -5 0 10 15 20 25 Usage: 0 Highcharts.com



Community Development Department

December 28, 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, January 7, 2016, 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.

Sky 19 Development, LLC, is requesting a variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces, located at the above mentioned property, to eight-seven (87) off-street parking and loading spaces on Lot 4B of Lot 4, Block 1, Meadowlark Commercial Sixth Addition (4600 North 19th Street).

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

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

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| BACKGROUND: | |
| Title: 4813 Kost Drive – Variance (Supplementary Provisions – Accessory Building) (Lot 18, Block 3, Sattler’s Sunrise 4 th Addition) | |
| Status: Board of Adjustment | Date: January 7, 2016 |
| Owner(s): Bryan Binstock | Engineer: None |
| Reason for Request: Variance from Section 14-03-05(4)(f) of the City Code of Ordinances (Supplementary Provisions) to allow an accessory building to be placed on a utility easement located along the southern portion of the property adjacent to the rear lot line. | |
| Location: In east Bismarck, north of East Century Avenue along the south side of Kost Drive. | |
| ADDITIONAL INFORMATION: | |
| <ol style="list-style-type: none"> 1. A member of the Building Inspection Division conducted an electrical inspection on October 1, 2015 for the wiring of an accessory building on the property. During the inspection it was discovered that a building permit was not issued for the accessory building and the required building inspections were not preformed. It was also noted that the accessory building did not meet the required building setbacks outlined in the zoning ordinance and was located four (4) feet over top of a ten (10) foot utility easement. A copy of the inspection notes is attached. 2. The applicant was informed that a building permit must be obtained, and the required inspections conducted. In addition, the accessory building must be moved in order to comply with the required setbacks outlined in the zoning ordinance. The applicant indicated to staff that an inquiry was made to the Building Division regarding the required setbacks for the accessory building. However, a building permit was not obtained to construct the accessory building. 3. The applicant has received letters of consent for the placement of the accessory building four (4) feet over top of the ten (10) foot utility easement from the utility companies that have interest in the easement (Capitol Electric, Montana-Dakota Utilities, Midcontinent Communications, and Century Link). The letters of consent are attached. | |
| APPLICABLE PROVISION(S) OF ZONING ORDINANCE: | |
| <ol style="list-style-type: none"> 1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.” 2. Section 14-03-05(4)(f) of the City Code of Ordinances (Supplementary Provisions) states, “No accessory building shall be allowed on any utility easement.” According to the site plan, the accessory building is located four (4) feet over top of a ten (10) foot utility easement. | |

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 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.

RECOMMENDATION:

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

/JW

Proposed Variance

Lot 18, Block 3, Sattler's Sunrise 4th Addition

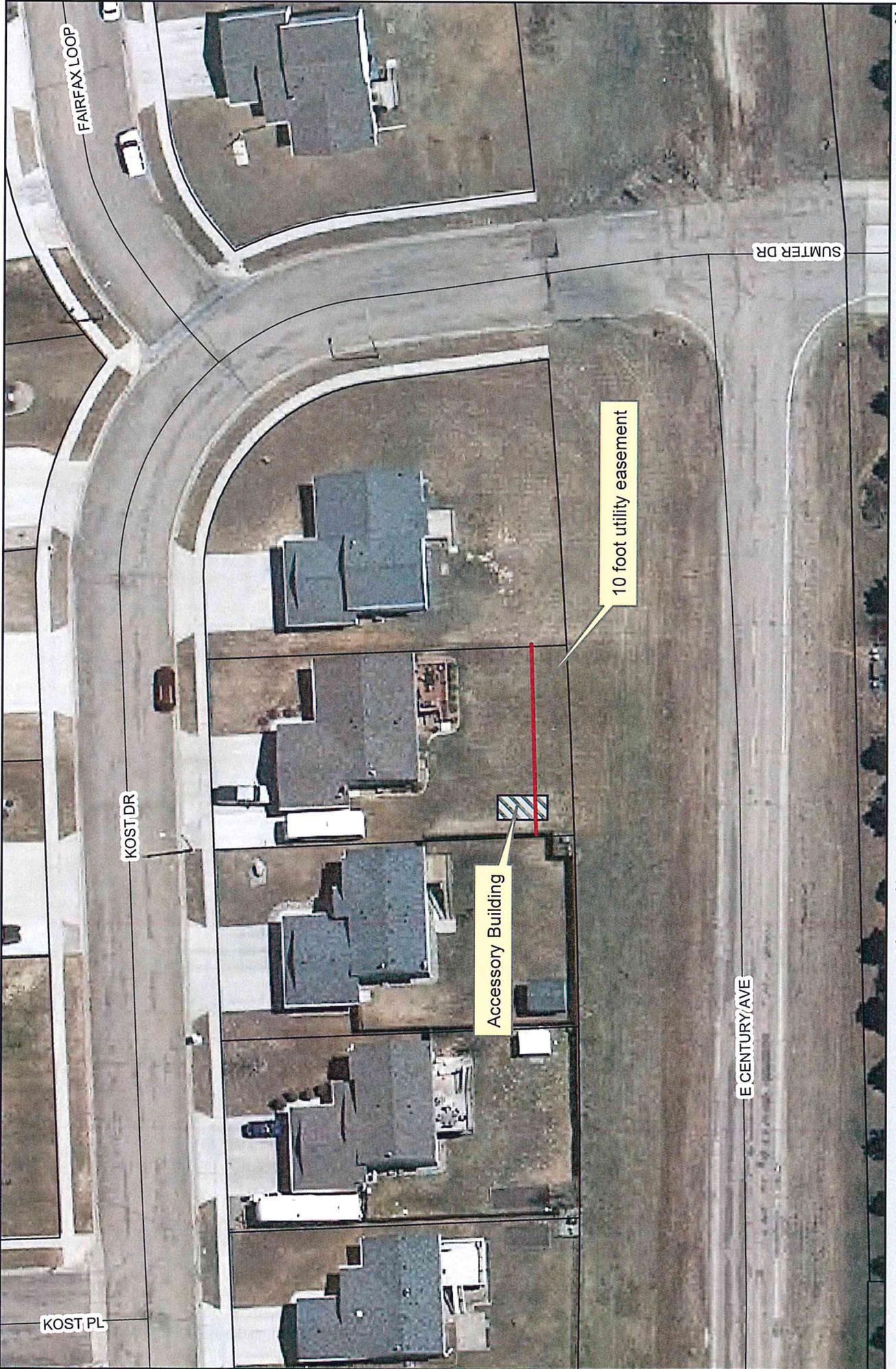


June 15, 2015 (hib)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



**Lot 18, Block 3, Sattler's Sunrise 4th Addition
(Supplementary Provisions - Accessory Building)**



Date: 12/23/2015

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



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

1. Property Address or Legal Description: 4813 Host Drive Bismarck NO 58503
2. Location of Property: City of Bismarck Extraterritorial Area (ETA)
3. Type of Variance Requested: ~~13.03-05(4)(F)~~ are to be located on utility easement
4. Applicable Zoning Ordinance Chapter/Section: 19.03-05(4)(F)

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.)

I talked to someone in the zoning department ~~at~~ at the city of Bismarck office and was given the wrong information on my offsets. However, not knowing then, I had built my shed thinking that the permit needed to be taken out at time of electrical. I spoke with my utility companies and they all approved of my shed placement. ~~you~~ did move my underground gas line running to my house due to the placement of the shed.

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

There was a misunderstanding about time of permit and offsets of my property line.

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

Due to wrong information on my utility easements my shed had been placed in the wrong spot. I am doing my best to fix this situation.



Community Development Department

December 28, 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, January 7, 2016, 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.

Bryan Binstock, is requesting a variance from Section 14-03-05(4)(f) of the City Code of Ordinances (Supplementary Provisions) to allow an accessory building to be placed on the utility easement located along the rear property line on Lot 18, Block 3, Sattler's Sunrise 4th Addition (4813 Kost Drive).

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

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

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan



September 21, 2015

Brady Blaskowski
City of Bismarck-Building Inspections
221 N 5th St
Bismarck N.D. 58506

Re: 4813 Kost Dr. Utility Easement Variance

Dear Brady,

Brian Binstock with an address of 4813 Kost Dr. wishes to build a lawn shed on part of the utility easement along the back property line of his lot which is in Sattler Sunrise 4th Block 3 Lot 18.

Capital Electric Cooperative will allow the construction of the shed on part of the utility easement, But if Capital Electric Cooperative has any problems with the underground wire in the area of the shed and there are additional charges associated with the repair or replacement of the underground wire it will be billable to the property owner.

Sincerely,

A handwritten signature in black ink that reads "Mike Berg". The signature is written in a cursive, flowing style.

Mike Berg
Staking Engineer
Capital Electric Cooperative



MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

September 30, 2015

ATTN: Brian Binstock
4813 Kost Dr
Bismarck, ND 58503

RE: Shed Over Utility Easement

Dear Brian,

Montana Dakota Utilities had reviewed its facilities and has determined that your shed does not appear to lie over the top of the gas main in the utility easement on the south property line of 4813 Kost Dr. Since the shed does not appear to be directly over the top of the gas main you may proceed with your project of building a shed. MDU will however need to relocate the gas service to your home at your cost to get the service line out from underneath the shed. This work is currently on MDU's schedule for a later date and should not affect your shed project.

If you have questions please call me at 701-224-5818.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Gusaas', is written over a faint horizontal line.

Joe Gusaas
Region Gas Engineer
Dakota Heartland Region



October 5th 2015

Bryan Binstock
4813 Kost Drive
Bismarck ND 58503

RE: Building a shed over utility easement.

Mr. Binstock,

Midcontinent Communications has looked at the shed and its relationship to the utility easement and our cables. We do not have a problem with the shed in its present location.

Sincerely,
Bill Boyd

A handwritten signature in black ink that reads "Bill Boyd". The signature is written in a cursive, flowing style.

Senior Construction Coordinator
Midcontinent Communications
719 Memorial Hwy.
Bismarck ND 58504

Bryan,

After reviewing your property and identifying the type of cables we have on your land, CenturyLink has decided to allow your building to remain sitting on our cables. We do not foresee any need to move them nor do we see any issues with repair in the future, in the unlikely event these cables need maintenance.

You are cleared from any obligation with CenturyLink regarding our cables.

Remick Albitre

CenturyLink

Area Plant Supervisor

1101 16th St. NE.

Mandan, North Dakota 58554

(O) 701.222.7244

(C) 701.301.0777

(F) 720.842.8504

Remick.Albitre@centurylink.com

September 21, 2015

Brady Blaskowski
City of Bismarck-Building Inspections
221 N 5th St
Bismarck N.D. 58506

Re: 4813 Kost Dr. Utility Easement Variance

Dear Brady,

Brian Binstock with an address of 4813 Kost Dr. wishes to build a lawn shed on part of the utility easement along the back property line of his lot which is in Sattler Sunrise 4th Block 3 Lot 18.

Capital Electric Cooperative will allow the construction of the shed on part of the utility easement, But if Capital Electric Cooperative has any problems with the underground wire in the area of the shed and there are additional charges associated with the repair or replacement of the underground wire it will be billable to the property owner.

Sincerely,

A handwritten signature in black ink that reads "Mike Berg". The signature is written in a cursive, slightly slanted style.

Mike Berg
Staking Engineer
Capital Electric Cooperative

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| BACKGROUND: | |
| Title: 1401 East Interchange Avenue – Parking Determination (Off-Street Parking) (Part of Block 2, Casey’s Commercial Park) | |
| Status: Board of Adjustment | Date: January 7, 2016 |
| Owner(s): Dale Zimmerman | Architect: JLG Architects |
| Reason for Request: Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces, located at the above mentioned property, to fifty-nine (59) off-street parking spaces to bring the building into conformance with the zoning ordinance. | |
| Location: Central Bismarck east of US Highway 83 / State Street, between of Interstate 94 and East Capitol Avenue, along the south side of East Interchange Avenue | |
| ADDITIONAL INFORMATION: | |
| <ol style="list-style-type: none"> 1. A parking determination is required in order for the existing building (40 Steak & Seafood) to comply with the off-street parking requirements outlined in Section 14-03-10 of the City Code of Ordinances. A total of fifty-nine (59) off-street parking spaces are provided on site. If the existing building and patio were constructed today, a total of ninety-four (94) off street parking spaces would be provided. 2. The existing 4,835 square foot restaurant was constructed in 1974. According to the building permit, thirty-two (32) off-street parking spaces were required. A copy of the building permit is attached. At that time, the required off-street parking was calculated at one parking space for each four (4) seats provided for patron use or one hundred (100) square feet of floor area used for patron use, whichever is greater. It appears that the parking may have calculated at the rate of one space per one hundred (100) square feet of floor area for patron use, ie the kitchen area was not included in the calculation. 3. A building permit to construct a 15’x54’ concrete patio was issued in 2006. The building permit did not require additional off-street parking spaces. However, fourteen (14) off-street parking spaces should have been required according to the City Code of Ordinances. A copy of the building permit is attached. 4. The applicant is proposing to construct a 745 square foot patio addition to the existing building which would increase the total number of required off-street parking spaces by twelve (12) spaces. A total of fifty-nine (59) off-street parking spaces are located on the property. The required off-street parking for the proposed patio addition, the patio addition permitted in 2006 and the building constructed in 1974 is fifty-eight (58) off street parking spaces. | |
| APPLICABLE PROVISION(S) OF ZONING ORDINANCE: | |
| <ol style="list-style-type: none"> 1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.” | |

2. Section 14-03-10 (2)(e) of the City Code of Ordinances (Off-Street Parking and Loading) states “Restaurants, including bars, taverns, night-clubs, lunch counters, diners, drive-ins and all similar dining or drinking establishments: One space for each sixty (60) square feet of gross floor area. Patio area shall be included when calculating gross floor area.” The applicant is proposing to construct a 745 square foot patio addition to the existing building; twelve (12) additional parking spaces are required for the addition. According to the site plan submitted with the request, fifty-nine (59) off-street parking spaces are currently provided on site and no additional off-street parking spaces would be provided.

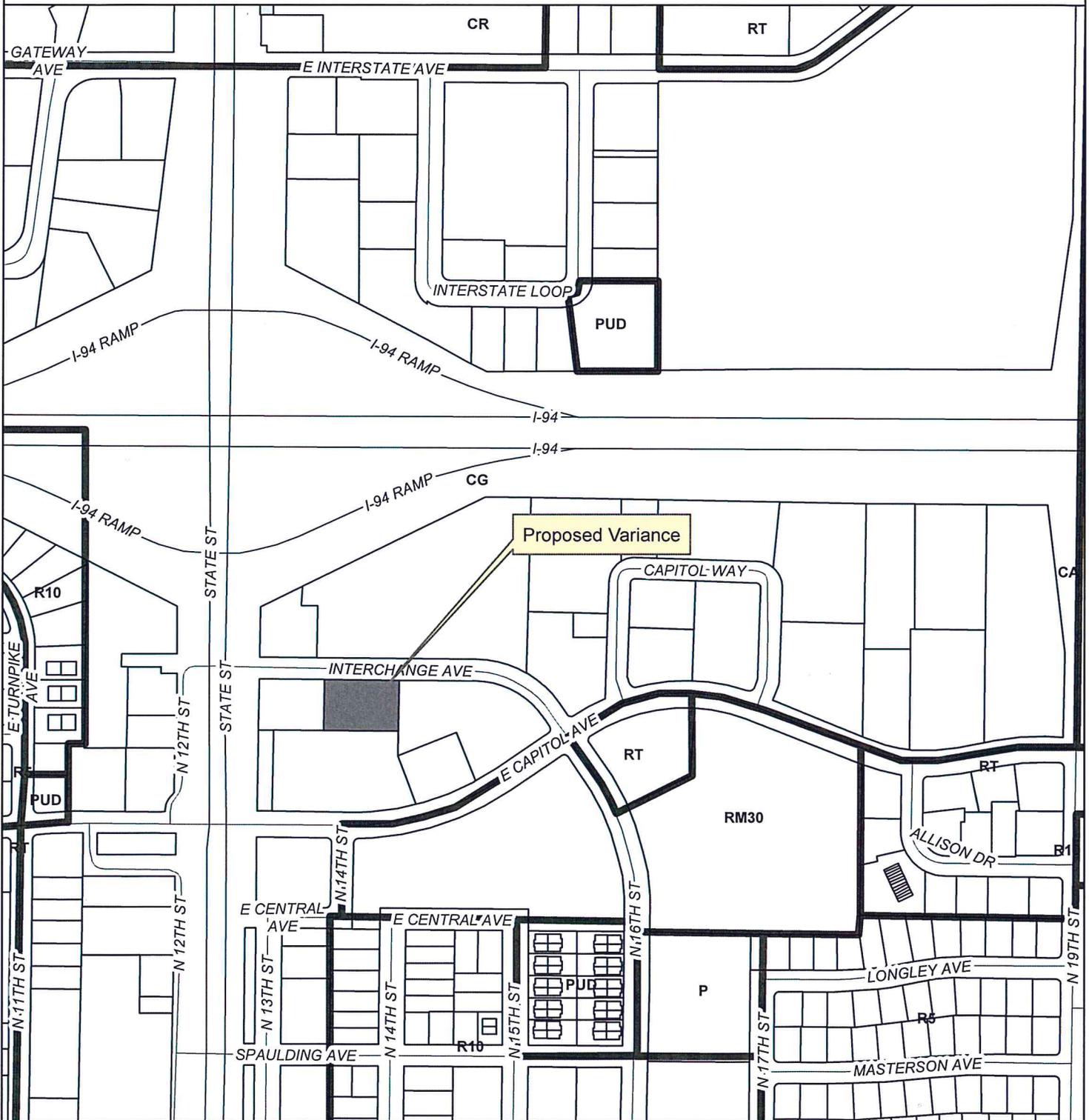
RECOMMENDATION:

Staff recommends reviewing the above information and making a determination if the off-street parking provided for the existing restaurant is acceptable.

If the proposed parking determination is not granted, staff suggests a variance be requested from Section 14-03-10 of the City Code of Ordinance to reduce the required number of off-street parking spaces to fifty-nine (59) off-street parking spaces.

Proposed Variance

Part of Block 2, Casey's Commercial Park



June 15, 2015 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.





1 EXISTING PROPERTY AERIAL IMAGE
SCALE: 1" = 50'-0"

PROJECT
JLG 15076
DATE
12/18/15
ISSUED FOR:
FROM SHEET NO.
SHEET NO.
ASI-001.4

40 STEAK & SEAFOOD
PATIO RENOVATION
BISMARCK, NORTH DAKOTA

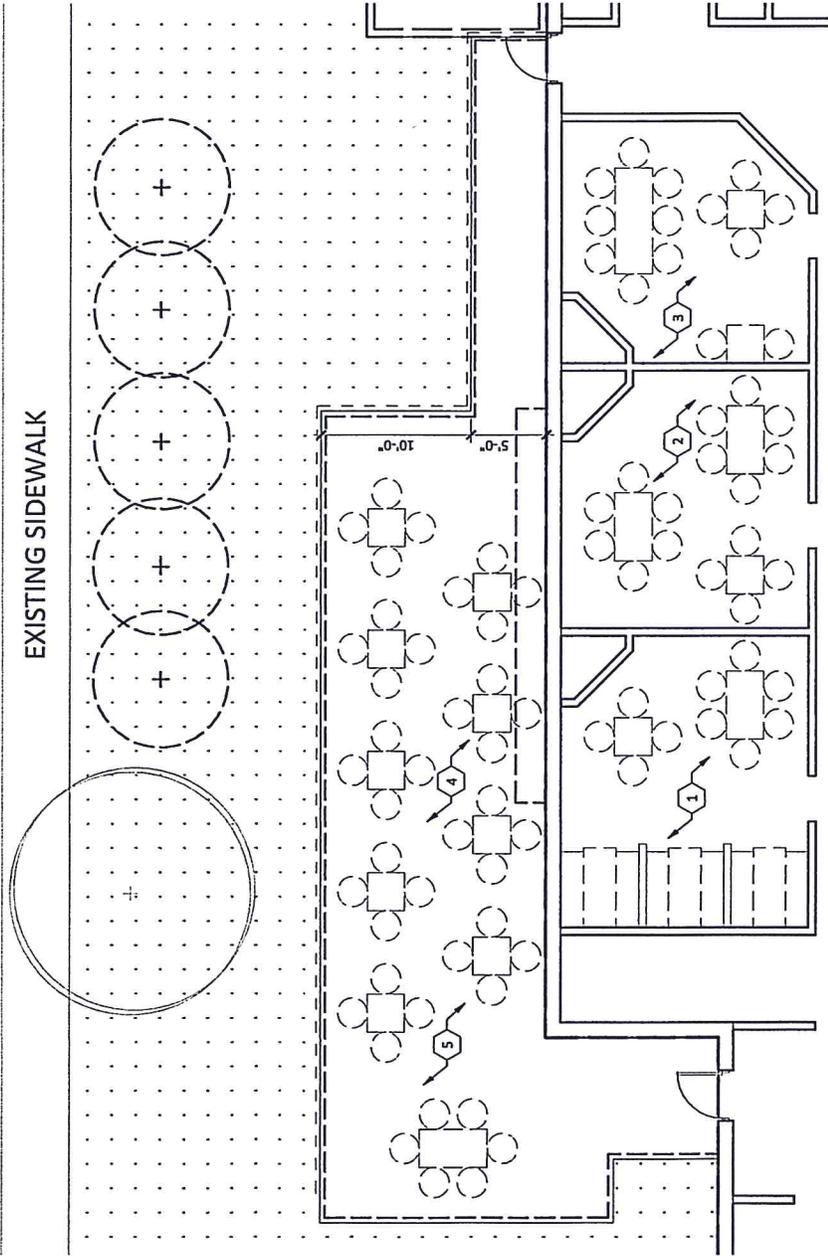


EAST INTERCHANGE AVENUE

EXISTING FURNITURE PLAN KEYNOTES

- 1. WOMEN OF THE PRAIRIE ROOM: DINING SEATING FOR 20
- 2. CATTLEMAN ROOM: DINING SEATING FOR 16
- 3. GOVERNOR'S ROOM: DINING SEATING FOR 14
- 4. EXISTING PATIO: DINING SEATING FOR 36
- 5. EXISTING PATIO: LOUNGE SEATING FOR 6
- 6. TOTAL EXISTING SEATING: 92

EXISTING SIDEWALK

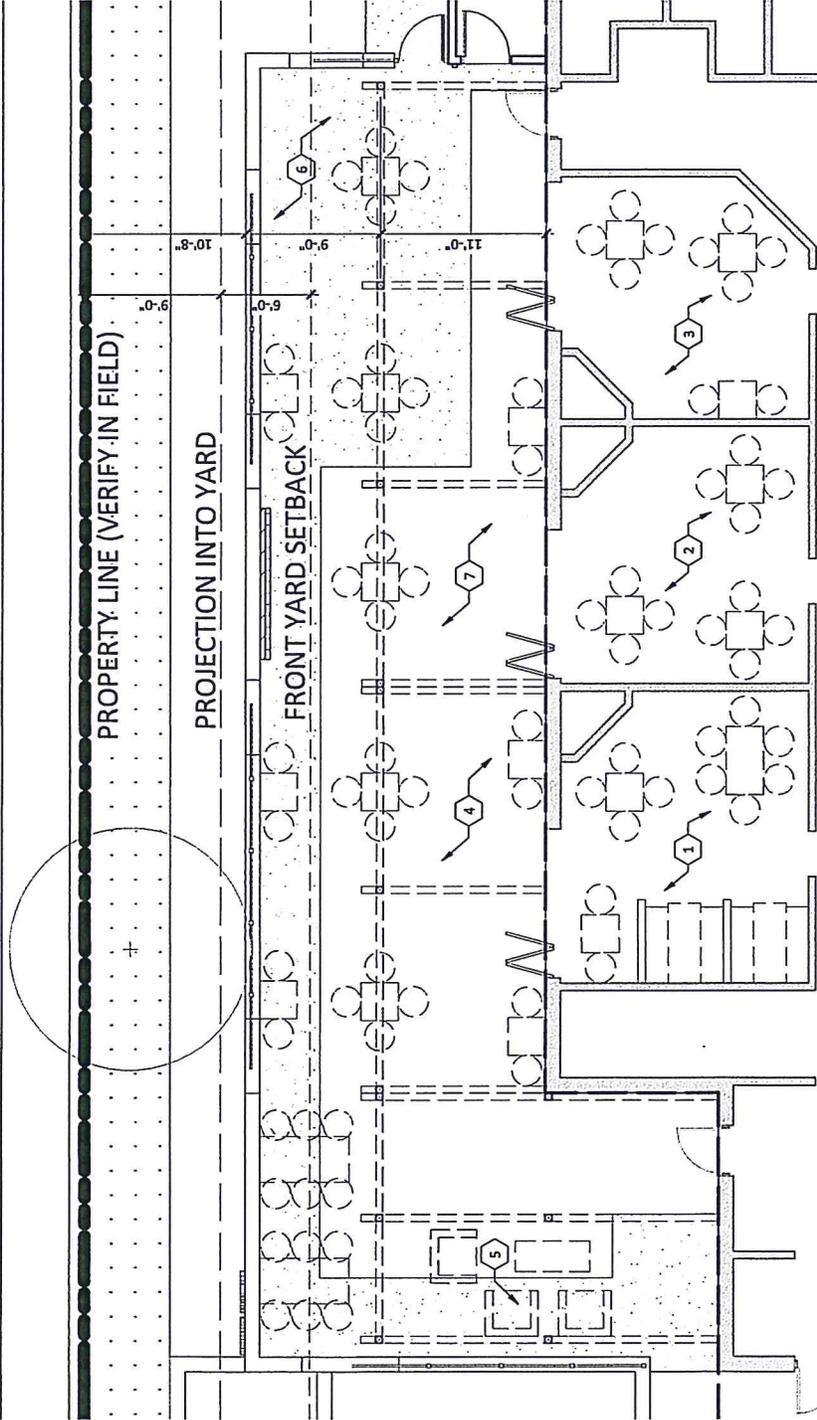


1 EXISTING FURNITURE PLAN
SCALE: 1/8" = 1'-0"

EAST INTERCHANGE AVENUE

PROPOSED FURNITURE PLAN KEYNOTES

1. WOMEN OF THE PRAIRIE ROOM: DINING SEATING FOR 18
2. CATTLEMAN ROOM: DINING SEATING FOR 12
3. GOVERNOR'S ROOM: DINING SEATING FOR 10
4. PROPOSED PATIO: DINING SEATING FOR 49
5. PROPOSED PATIO: LOUNGE SEATING FOR 3
6. PROPOSED PATIO: MUSICIAN AREA
7. TOTAL PROPOSED SEATING: 92



1 PROPOSED FURNITURE PLAN
SCALE: 1/8" = 1'-0"

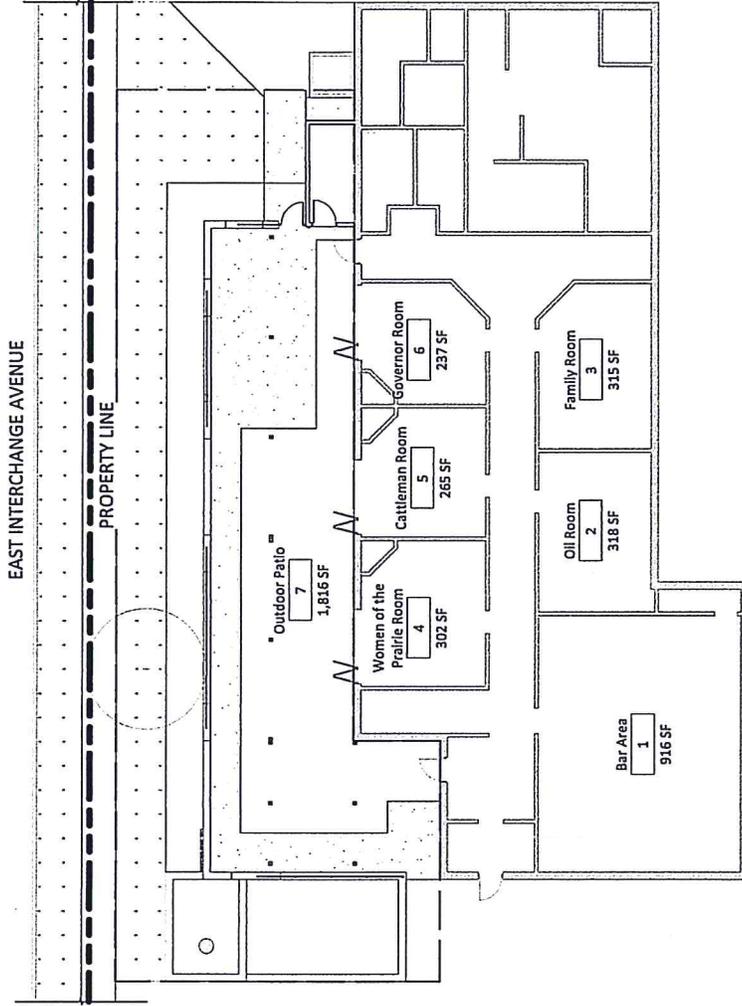
PROJECT
JLG 15076

DATE
12/18/15

ISSUED FOR:
FROM SHEET NO.

SHEET NO.
ASI-001.2

| ROOM AREAS | |
|------------|---------------------------|
| Area | ROOM NAME |
| 237 SF | Governor Room |
| 265 SF | Cattleman Room |
| 302 SF | Women of the Prairie Room |
| 315 SF | Family Room |
| 318 SF | Oil Room |
| 916 SF | Bar Area |
| 1816 SF | Outdoor Patio |
| 4168 SF | |



1 FLOOR PLAN WITH ROOM AREAS
SCALE: 1/16" = 1'-0"

DATE
12/18/15
PROJECT
JLG 15076
ISSUED FOR:
FROM SHEET NO.
SHEET NO.
ASI-001.3



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

1. Property Address or Legal Description: 1401 E Interchange Ave

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

3. Type of Variance Requested: Parking

4. Applicable Zoning Ordinance Chapter/Section: Title 14.2, section "e" / 14-03-10

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

The current Zoning Ordinance requires one off-street parking parking stall per 60 square feet of restaurant and outdoor patio area. The proposed 745 square foot patio expansion requires an additional (12) parking stalls to be provided off-street. The current lot size does not provide enough area to construct any additional off-street parking.

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

The only option to accommodate the required amount of additional parking for the 745 square foot patio expansion is to construct approximately 3,600 square feet of additional parking. The current parking area is an efficient double-loaded drive aisle, and it has been determined no additional parking would be accommodated by widening the existing parking area or re-striping the parking.

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

The only variance being requested is to waive the requirement for additional off-street parking due to the proposed patio expansion. The current parking area accommodates 51 parking stalls with 7 on-street stalls adjacent to the property. The net area of restaurant seating and outdoor patio expansion total 4,168 SF. The required parking total parking to accommodate the existing net area of seating and the proposed expansion is 70 stalls.



Community Development Department

December 28, 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, January 7, 2016, 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.

Sky 19 Development, LLC, is requesting a variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces, located at the above mentioned property, to eight-seven (87) off-street parking and loading spaces on Lot 4B of Lot 4, Block 1, Meadowlark Commercial Sixth Addition (4600 North 19th Street).

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

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

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan



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

DATE 12/23/77 SIGNATURE Carol Schell

GAS PIPING APPROVED
 date 12-17-74 by RS
 Street E. ENTERPRISE AVE

GAS PIPING APPROVED
 date 12-17-74 by RS

GAS PIPING APPROVED
 date 12-17-74 by RS Application No. 74-236

APPLICATION FOR BUILDING PERMIT

Bismarck North Dakota, 6-19 1974

To the Building Inspector:

The undersigned hereby makes application for a permit to CONSTRUCT the following described building, and in consideration of the issue and delivery to use by the Building Inspector of the City of Bismarck of such permit, hereby agrees to do the proposed work in accordance with the description hereinafter set forth and according to the provisions of the ordinances of the City of Bismarck, and that the facts set forth by me are true and correct and the undersigned further agrees and understands that if the proposed work is not done in accordance with the description hereinafter set forth, this building permit shall immediately terminate and be void and of no effect and the undersigned shall be in the same position as respects all incidents of law, as though no permit had been issued and shall be subject to prosecution therefor.

This permit expires in 5 years but must be renewed every 6 months.

Note: All inspection will be made at request of builder at completion of stages.

Owner: F&D BISMARCK JOINT VENTURES
 Builder: AL KRAFT CORP.
 No: 1401
 Street: E. ENTERPRISE AVE
 Part of Lot 200' E OF MAX COR. Q14 Q 3. 155'
 Lot: 230' N 155' TO PT. OF COR
 Block: 2
 Addition: CASEY COMMERCIAL PARK
 District: C-9 To Be Completed:
 Estimated Cost: \$170,000
 Use: RESTAURANT
 No. Rooms: 13 No. Bedrooms:
 Baths: 2 Toilet Rooms: 2 Stories:
 No. Families:
 Front: 115' Depth: 52'
 Size of Eaves: 2'
 Manner of Construction: WOOD FRAME + STUCCO
 Garage Size:
 Off Street Parking Space No. 32

Lot Size: 230' X 155'
 Depth of Front Yard: 30'
 Depth of Side Yard: 33' EAST
 Total Finished Area: 11824
 Area of Main Building: 4824
 Area of Accessory Buildings: 6400
 Total Area: 11272
 Lot Area: 31,000
 % of Lot Occupied: 36.4%
 Type of Apartment:

| | |
|--------------------------|------------|
| FEE'S | |
| Certificate of Occupancy | <u>55</u> |
| Permit | <u>430</u> |
| Survey | <u>35</u> |
| Total | <u>520</u> |

PERMIT TO BUILD
 Bismarck, North Dakota 6-19 1974

Permission is hereby granted to F&D BISMARCK JOINT VENTURES to CONSTRUCT the building described in APPLICATION FOR BUILDING PERMIT NO. 74-236. The Permit is hereby granted upon the express conditions that the person to whom it is granted, his agents, employees and workmen, that all of the work done in, around and upon said building or any part thereof shall conform in all respects to the ordinances of the City of Bismarck concerning the construction, alteration, maintenance, repair and removal of buildings and the ordinance of said City known as the Zoning Ordinance. I, the owner or builder, request that the City conduct all inspections required by City Ordinance.

Al Kraft Construction
 Owner of Builder

W W August
 Witness

Jack Regula
 Building Inspector

Property Address 1401 INTERCHANGE AV Location CITY OF BISMARK Phone 258-2070
 Elevation
 Special Flood Hazard NO
 Architect JDCONLIN LLC
 Decded Owner SELF
 Contractor MATT LEVINE
 Nondeded Owner MATT LEVINE
 Contact Person LOREN GALPIN
 Contractor Num 1
 Phone Num 258-6663

Desc Of Work CONSTRUCT 15'X 54' CONCRETE PATIO WITH RAILING & GATE ON NORTH SIDE OF EAST 40 RESTAURANT
 Block 2
 NOTICE: In accordance with state regulation, an asbestos inspection is required before and renovation or demolition. Please contact the ND Department of Health at (701)328-5188 for more information

Property Number 322-002-007
 Addition Name CASEY'S COMMERCIAL PARK
 Legal Desc 1. BEG AT PT ON N LINE B2 200' E
 3. W 230' N 155' TO BEG #20423.1
 2. OF NW COR TH E 230' S 155'
 4.

Type Of Work 2 - ADDITION Zoning Dist CG - COMMERCIAL
 Occupancy Group A - ASSEMBLY Division 2
 Num Living Units 0 Stories 0
 Size Eaves 0 Type Const VB
 Ownership Code 1 - PRIVATE

| Area Main Bldg | Previous Permit (s) | Current Permit | Total |
|-------------------------|---------------------|----------------|-------|
| Garage Size | 0 | 0 | 0 |
| Total Finished | 0 | 0 | 0 |
| Total Basement Finished | 0 | 0 | 0 |
| Area Acc Bldgs | 0 | 0 | 0 |
| Num Off Street Parking | 0 | 0 | 0 |
| Area Off Street Parking | 0 | 0 | 0 |
| Total | 0 | 0 | 0 |

Cost Less Land 7,935.00
 Service Line Size Water Mtr .75= 0 1=0 1.5=0 2=0 3=0 Water Agreement: NO Concrete Work: NO

Charges:
 Permit Fee 118.15 Water Meter .00 Lot Survey .00
 Road Approach .00 Mobile Home .00
 Payment Method Billed Num 6008894 ALL CHARGES ARE DUE AND PAYABLE WITHIN 30 DAYS TOTAL 118.15 ***

Separate permits are required for electrical, plumbing and mechanical (HVAC). Work under this permit must commence within 180 days of permit issuance and once commenced, work may not be suspended for more than 60 days. Permittee must comply with all codes and ordinances applicable to work. Issuance of this permit does not grant any authority to erect, modify or use any structure in violation of any code or ordinance. All required inspections, including a final inspection, must be requested by the permittee. In consideration for connection to City utilities, Permittee agrees to pay all applicable utility fees and charges pursuant to City Ordinance. This permit creates no warranties with regard to construction of code compliance. The inspections under this permit are for the benefit of the public and not the Permittee and the inspections do not create a duty to the Permittee, the owner or to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

I hereby certify that I have read and examined this application and know the same to be true and correct.
 BILL AUGUSTADT LAURA STROH
 Building Official Issued By Permit Applicant

1Bylaws of the City of Bismarck Board of Adjustment

Article I. Authorization

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

Article II. Purpose

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

Article III. Membership and Organization

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

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

The chairperson shall preside at all Board of Adjustment meetings and review agendas with staff.

The vice-chairperson shall conduct all business delegated by the chairperson, in his or her absence.

Article IV. Conduct of Members and Ethics

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

B. Conflict of Interest. Any member of the Board of Adjustment who has a direct and substantial personal or pecuniary (financial) interest in a matter before the Board must disclose the fact to the Board and may not participate or vote on that particular matter without the consent of a majority of the rest of the Board.

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

D. Ex-parte Communication. Ex-parte communication includes any oral or written communication between a member of the Board and any other person interested in an item before or scheduled to be before the Board. Communications on a particular item sent to the Board after the agenda packet has been sent via email or mail may be distributed and announced at the Board of Adjustment meeting. Board of Adjustment members shall comply with applicable City and State open meeting requirements.

Article V. Powers and Duties of the Board

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

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

Article VI. Appeals to the Board

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

B. Appeal – Procedure. The Board of Adjustment shall fix a reasonable time for the hearing of an appeal or for action on any matter upon which it is required to pass under Title 14 of the City Code of Ordinances and give due notice thereof to interested parties, and make all decisions within a reasonable time. *(Title 14)*

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

C. Appeal to the Board of City Commissioners. A decision of the Board of Adjustment may be appealed to the Board of City Commissioners by either the aggrieved applicant or by any officer, department, board, or bureau of the City by filing within fifteen (15) calendar days after notice of the decision, with the office of the City Administrator or the Community Development Department. *(Title 14)*

The Board of city Commissioners shall fix a time, within thirty (30) days, for the hearing of the appeal and shall give due notice of the hearing to the parties.

Article VII. Findings of Fact

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

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

Article VIII. Lapse

A. Lapse. A variance granted must be put into use within twenty-four (24) months of the granting of the variance or it shall lapse and the landowner or their agent must re-apply.

Article IX. Meetings

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

B. Meeting Notice. Notice of the time and place of a hearing shall be sent to the applicant or their agent after a complete application is submitted to staff for action by the Board of Adjustment. Notice of the time, place and request of the Board of Adjustment shall be sent to all known adjacent property owners no later than ten (10) days prior to the Board of Adjustment meeting unless specifically approved by the chairperson of the Board.

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

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

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

Article X. Staff Responsibilities

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

Article XI. Amendment of Bylaws

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

Adopted this ____ day of _____, 2016

Board of Adjustment

Chairman