



*Community Development Department*

**BISMARCK BOARD OF ADJUSTMENT  
MEETING AGENDA**

**April 7, 2016**

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**Tom Baker Meeting Room**

**5:00 p.m.**

**City-County Office Building**

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**MINUTES**

1. Consider the minutes of the January 7, 2016 meeting of the Board of Adjustment.

**REQUESTS**

2. **Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Residential / Front Yard) – Lot 4, Block 2, Pine Meadows Subdivision (8201 White Oak Loop).**

*Owner / Applicant: Jason and Chris Dirk*

*Board Action:*      approve      continue      table      deny

3. **Variance from 14-04-06(7) of the City Code of Ordinances (R10 – Residential / Front Yard) – The West 100 feet of Lots 31-32, Block 20, Flannery & Wetherby Addition (831 North 16<sup>th</sup> Street).**

*Owner / Applicant: Morris and Jacqueline Conklin*

*Board Action:*      approve      continue      table      deny

4. **Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Residential / Front Yard) – Part of the southwest quarter of the southwest quarter of Section 2/Hay Creek Township (7201 Burnt Creek Loop)**

*Owner / Applicant: Bill and Marcia Patrie*

*Board Action:*      approve      continue      table      deny

**ADJOURNMENT**

5. **Adjournment.** The next regular meeting date is scheduled for May 5, 2016





# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

Agenda Item # 2

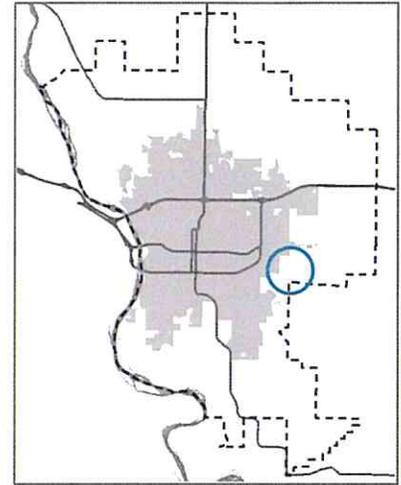
April 7, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-001

### Project Summary

<b>Title:</b>	Lot 4, Block 2, Pine Meadows Subdivision (8201 White Oak Loop)
<b>Status:</b>	Board of Adjustment – Public Hearing
<b>Owner(s):</b>	Jason and Chris Dirk
<b>Project Contact:</b>	Jason Dirk
<b>Location:</b>	East of Bismarck, south of County Highway 10 and East of 80 <sup>th</sup> Street SE, along the south side of White Oak Loop.
<b>Request:</b>	Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Residential / Front Yard) to reduce the front yard setback located along the north side of the property, from forty (40) feet to thirty-five (35) feet in order to construct a 1,350 square foot accessory building.



### Staff Analysis

The applicant is proposing to construct a 1,350 square foot accessory building setback thirty-five (35) feet from the front property line located along the north side of the property.

shall have a front yard not less than forty (40) feet in depth as measured from the front property line.”

According to the site plan submitted with the application, the proposed accessory building would be set back thirty-five (35) feet from the front property line located along the north side of the property.



(8201 White Oak Loop)

### Required Findings of Fact

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

### Applicable Provision(s) of Zoning Ordinance

Section 14-04-01(4) of the City Code of Ordinances (RR – Residential / Front Yard) states, “Each platted lot

(continued)

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

**Staff Recommendation**

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

**Attachments**

1. Location Map
2. Site plan
3. Written Statement of Hardship

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Staff report prepared by: Jenny Wollmuth, Planner  
710-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Lot 4, Block 2, Pine Meadows Subdivision

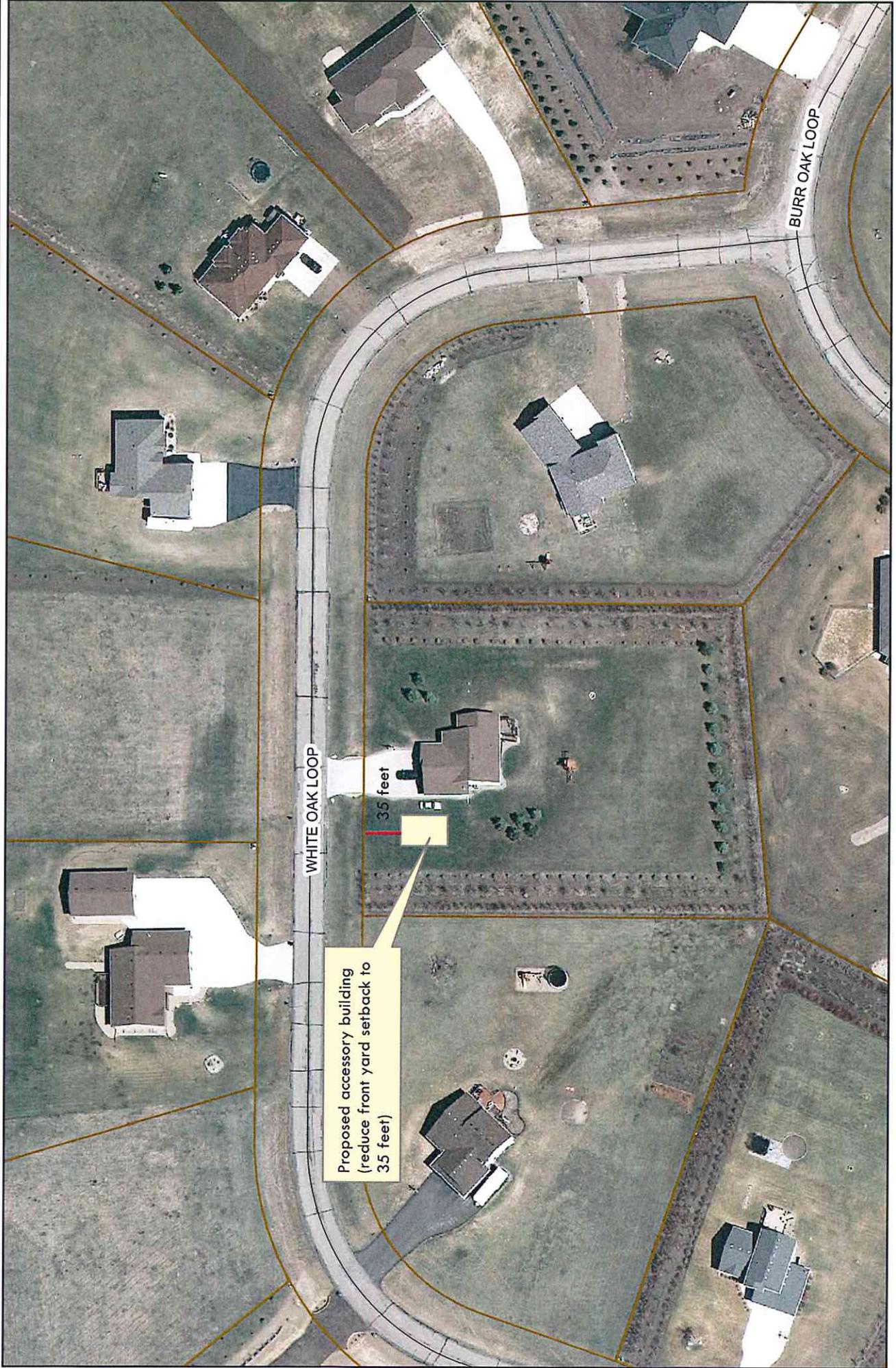


June 15, 2015 (h1b)

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 herein.



**8201 White Oak Loop (Front yard setback)  
Lot 4, Block 2, Pine Meadows Addition**



Date: 4/1/2016

*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:

8201 White Oak Loop

2. Location of Property:

City of Bismarck

Extraterritorial Area (ETA)

3. Type of Variance Requested:

Reduce front setback from 40' to 35' for new shop

4. Applicable Zoning Ordinance Chapter/Section:

14.04-01 (4) Rural Residential / Front yard

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 requirements would limit the use of our property in two ways. The first limitation we have is the steep grade of the ditch adjacent to our street. In order to access our garage from the north, we would need to push the garage back at least 10' from the front of our house. This leads into our other limitation. We have a group of 5 mature Colorado Blue spruce that would need to be removed if we were to push the garage back that far. We would like to access the garage from the east to avoid the steep grade and the tree removal. In order to access it from the east, we would need to reduce the front setback from 40' to 35'.

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

Trees are a valuable asset to us. They provide us shelter from N.D.'s elements, habitat for birds, and a visibility buffer between ours and our neighbor's yards. We have put a great deal of effort into making sure our trees stay healthy. To have to remove them would be difficult. If we have to access our garage from the north we will need to push it back farther into our yard because of the steep grade in the front. That means not only would we lose trees, but we would lose a bigger portion of our front yard because the driveway would need to be longer.

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

5' is the minimum distance we would need to be able to build the size garage we would like and to be able to access it from the east. By accessing it from the east and moving it forward we will be able to avoid the steep grade in the front and the removal of mature trees in the back.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

Agenda Item # 3

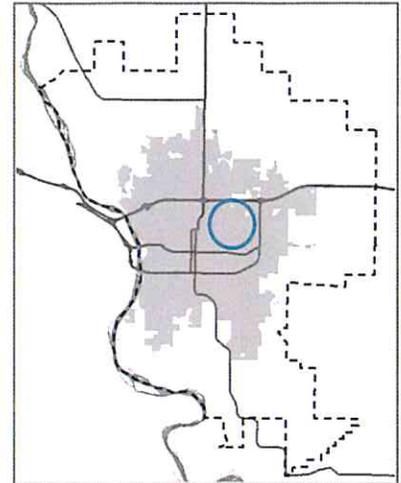
April 7, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-002

### Project Summary

<b>Title:</b>	The West 100 feet of Lots 31-32, Block 20, Flannery & Wetherby Addition (831 North 16 <sup>th</sup> Street)
<b>Status:</b>	Board of Adjustment – Public Hearing
<b>Owner(s):</b>	Morris and Jacqueline Conklin
<b>Project Contact:</b>	Morris Conklin
<b>Location:</b>	In central Bismarck, in the southeast quadrant of the intersection of North 16 <sup>th</sup> Street and East Avenue E.
<b>Request:</b>	Variance from Section 14-04-06(7) of the City Code of Ordinances (R10 – Residential / Front Yard) to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to nineteen feet six inches (19' 6") and a variance from Section 14-04-06(9) of the City Code of Ordinances to reduce the required rear yard setback along the south side of the house from twenty (20) feet to seven feet, four inches (7' 4") for the purpose of constructing a detached accessory building.



### Staff Analysis

The existing house and detached accessory building were constructed in 1948. It is likely that the house and detached accessory building were constructed in conformance with the zoning ordinance at that time. However, as the applicant is proposing to demolish the existing accessory building and reconstruct it in a slightly different location, variances are required.

The existing house is set back approximately seventeen (17) feet from the front property line located along the north side of the property, adjacent to East Avenue E. In addition, the existing accessory building is located approximately twenty-one (21) feet from the front property line adjacent to East Avenue E.



(813 North 16<sup>th</sup> Street)

### Applicable Provision(s) of Zoning Ordinance

Section 14-04-06(7) of the City Code of Ordinances states, "Each lot shall have a front yard of not less than twenty-five (25) feet in depth." According to the site plan submitted with the application the proposed

(continued)

accessory building would be nineteen feet, six inches (19' 6") from the front property line adjacent to East Avenue E.

Section 14-04-06(9) of the City Code of Ordinances states, "Each lot shall have a rear yard not less than twenty (20) feet in depth." According to the site plan submitted with the application the proposed accessory building would be seven feet, four inches (7' 4") from the rear property line located along the southern portion of the property. It should be noted however, that the existing house is also located seven feet, four inches (7'4") from the rear property line.

#### **Required Findings of Fact**

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10 - Residential zoning 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.

#### **Staff Recommendation**

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

#### **Attachments**

1. Location Map
2. Site Plan
3. Written Statement of Hardship

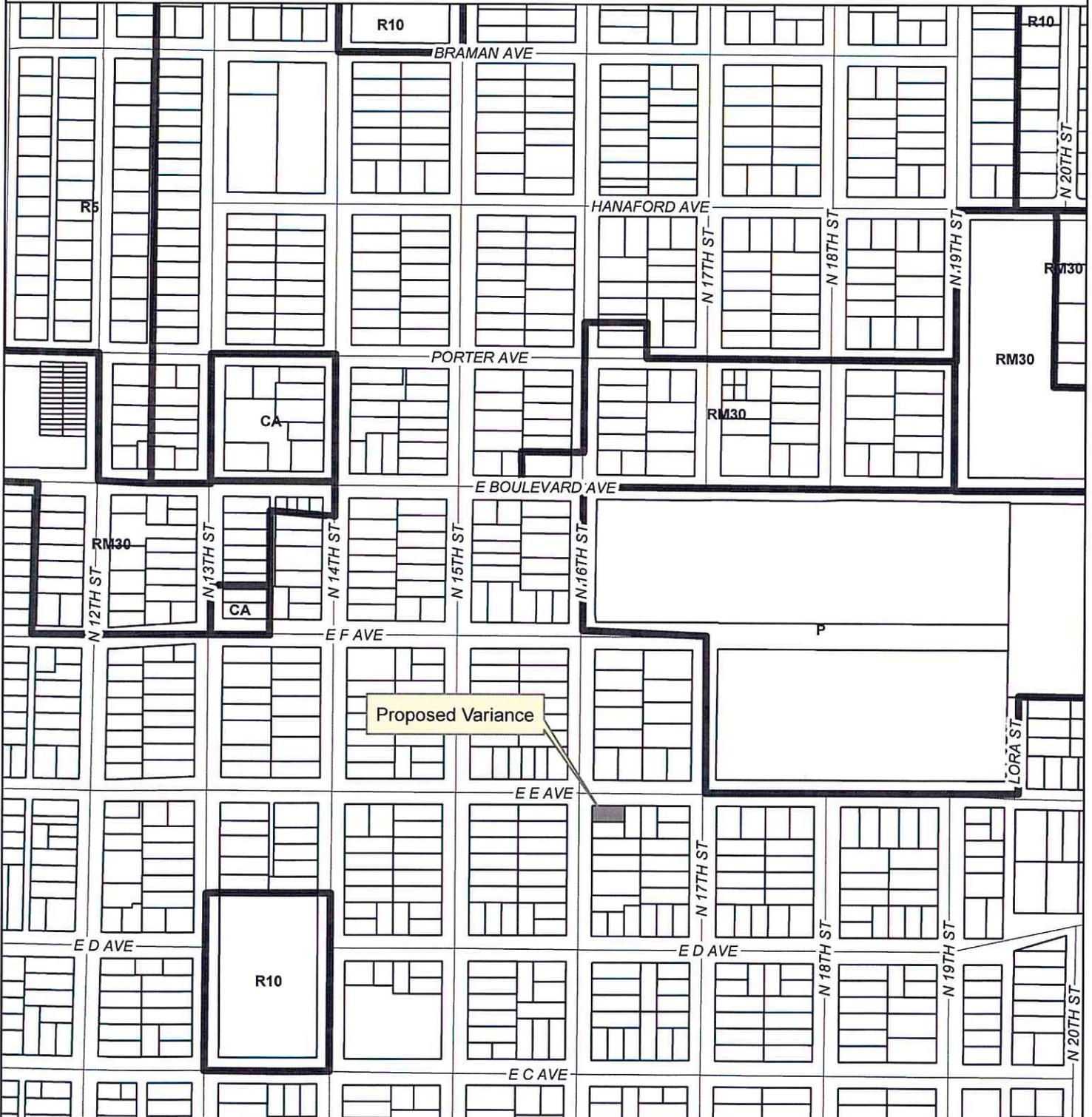
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Staff report prepared by: Jenny Wollmuth, Planner  
710-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## The West 100' of Lots 31-32, Block 20

### Flannery & Wetherby Addition

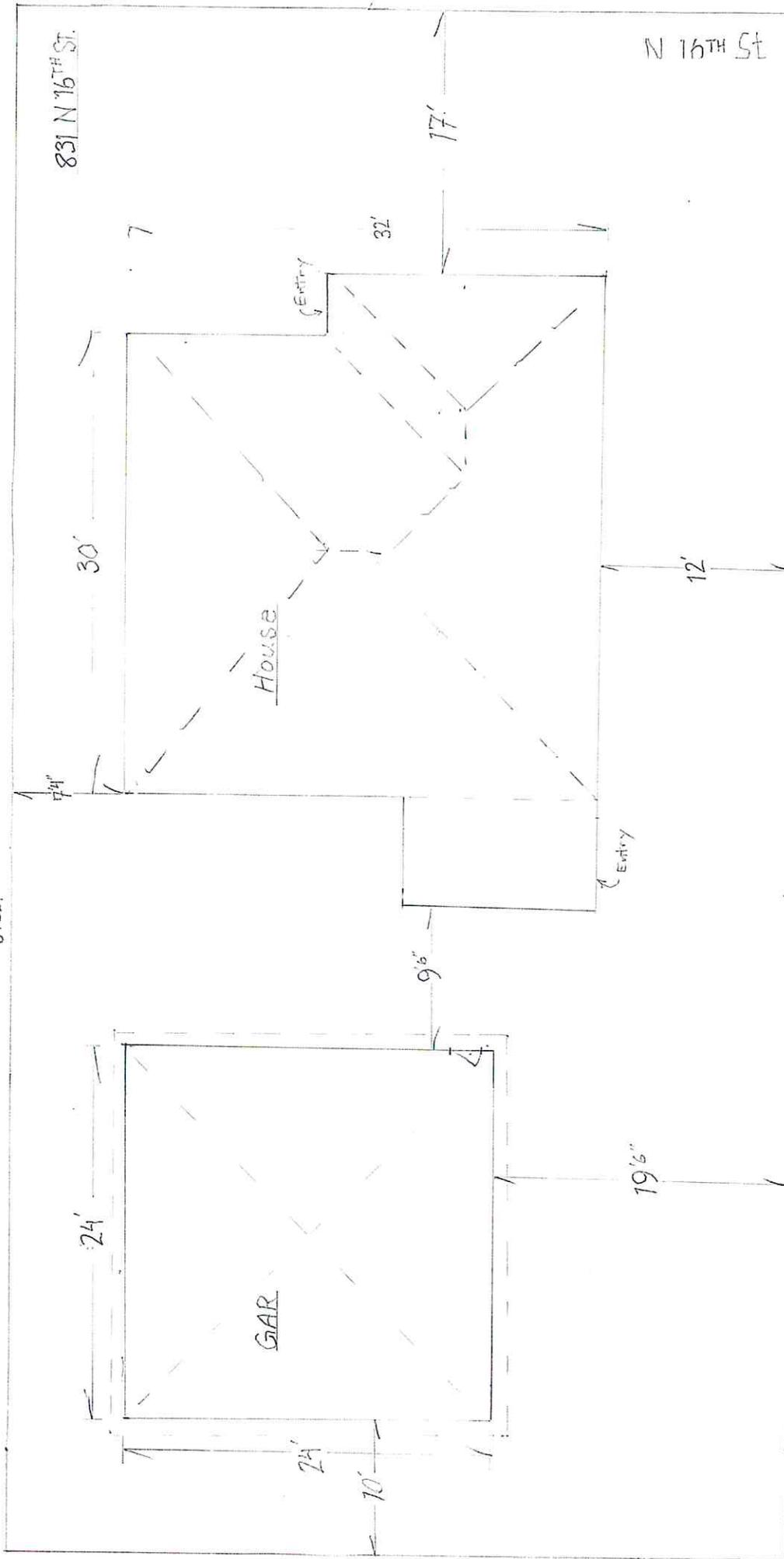


June 15, 2015 (hlb)

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SITE PLAN SCALE: 1" = 6'  $\frac{1 \text{ INCH}}{6 \text{ FEET}}$



W 100 FT OF LOTS 31-32 BLOCK 20 FLANNERY & WETHERBY

E. AVE E

N 16th St

831 N 16th St.

30'

17'

32'

Entry

House

12'

Entry

9'6"

24'

GAR

19'6"

24'

10'



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

1. Property Address or Legal Description: 831 North 16th Street

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

3. Type of Variance Requested: Front yard - Reduce req'd 25' fypse to 19 feet 6" to construct a detached garage

4. Applicable Zoning Ordinance Chapter/Section: 14-04-06(7)

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. )

Safety Concern: When the property was zoned, the garage was in compliance. Now the garage needs to be replaced as 1/4 of the slab/foundation is cracked and settled, resulting in some loss of structural integrity and creating a potentially dangerous situation for use of the east parking stall of the garage. We would like to maintain the 19' set-back for new construction and the 9' separation between house + garage.

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

When a car is in the driveway 2 ft. from the garage door, the rear bumper is very close to the sidewalk. There is not enough room at the opposite end of the garage to feasibly move the garage more to the south. We would request variance to keep the "footprint" as it currently is, with the only addition a 1ft. overhang on all four sides, for water drainage and protection.

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

(See above.) We would have to make the garage too short (from front to back) to be useful as a garage and to keep some off-street parking.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

Agenda Item # 4

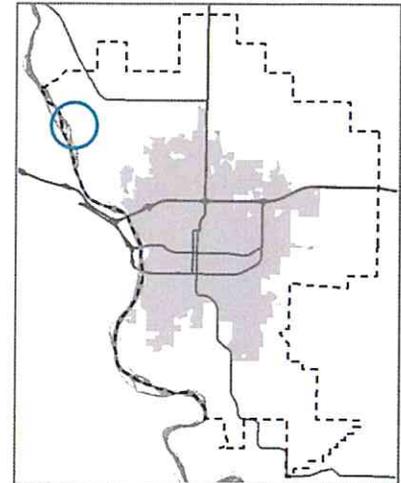
April 7, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-003

### Project Summary

<b>Title:</b>	Part of the southwest quarter of the southwest quarter of Section 2/Hay Creek Township (7201 Burnt Creek Loop)
<b>Status:</b>	Board of Adjustment – Public Hearing
<b>Owner(s):</b>	Bill and Marcia Patrie
<b>Project Contact:</b>	Bill Patrie
<b>Location:</b>	Northwest of Bismarck, along the east side of the north-south segment of Burnt Creek Loop, north of Horseshoe Bend.
<b>Request:</b>	Variance from Section 14-05-07 of the City Code of Ordinances (Requirements for a Building Permit) in order to construct a 1,280 square foot accessory building.



### Staff Analysis

The applicant is proposing to construct a 1,280 square foot accessory building on a parcel that is a parcel of record, described as an Auditor’s lot, and located in the A – Agriculture zoning district.

The parcel meets two of the three criteria listed above. It is considered to be a parcel of record; has its principal frontage on a dedicated public right-of-way (Burnt Creek Loop); and is described by an Auditor’s Lot. However, it does not meet the minimum parcel size for a parcel zoned A – Agriculture which is 40 acres.

### Applicable Provision(s) of Zoning Ordinance

Section 14-05-07 of the City Code of Ordinances (Requirement for a Building Permit) states, “A building permit may be issued for a new accessory building on a parcel of record with the an existing single-family principal building, provided; 1) the parcel of record meets the minimum lot area requirement for a zoning lot in in the district in which the parcel is located; 2) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide; and 3) the parcel of record is an auditor’s lot or aliquot description rather than a metes and bounds description.”

### Required Findings of Fact

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 A – Agricultural 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.

(continued)

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

**Attachments**

1. Location Map
2. Site Plan
3. Written Statement of Hardship

**Staff Recommendation**

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

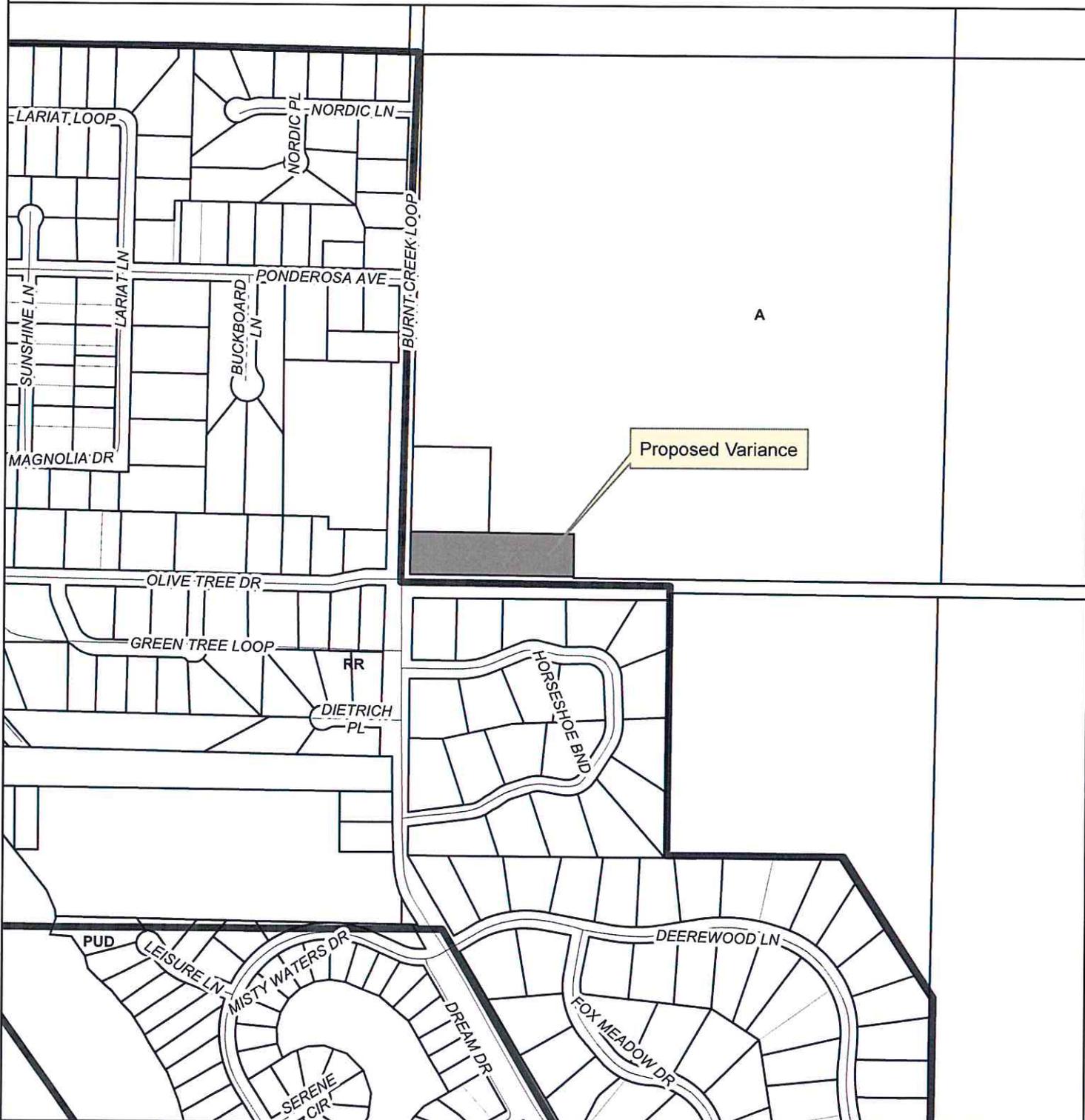
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*Staff report prepared by:* Jenny Wollmuth, Planner  
710-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Part of the SW1/4 of the SW1/4 of Section 2

### T139N-R81W/Hay Creek Township

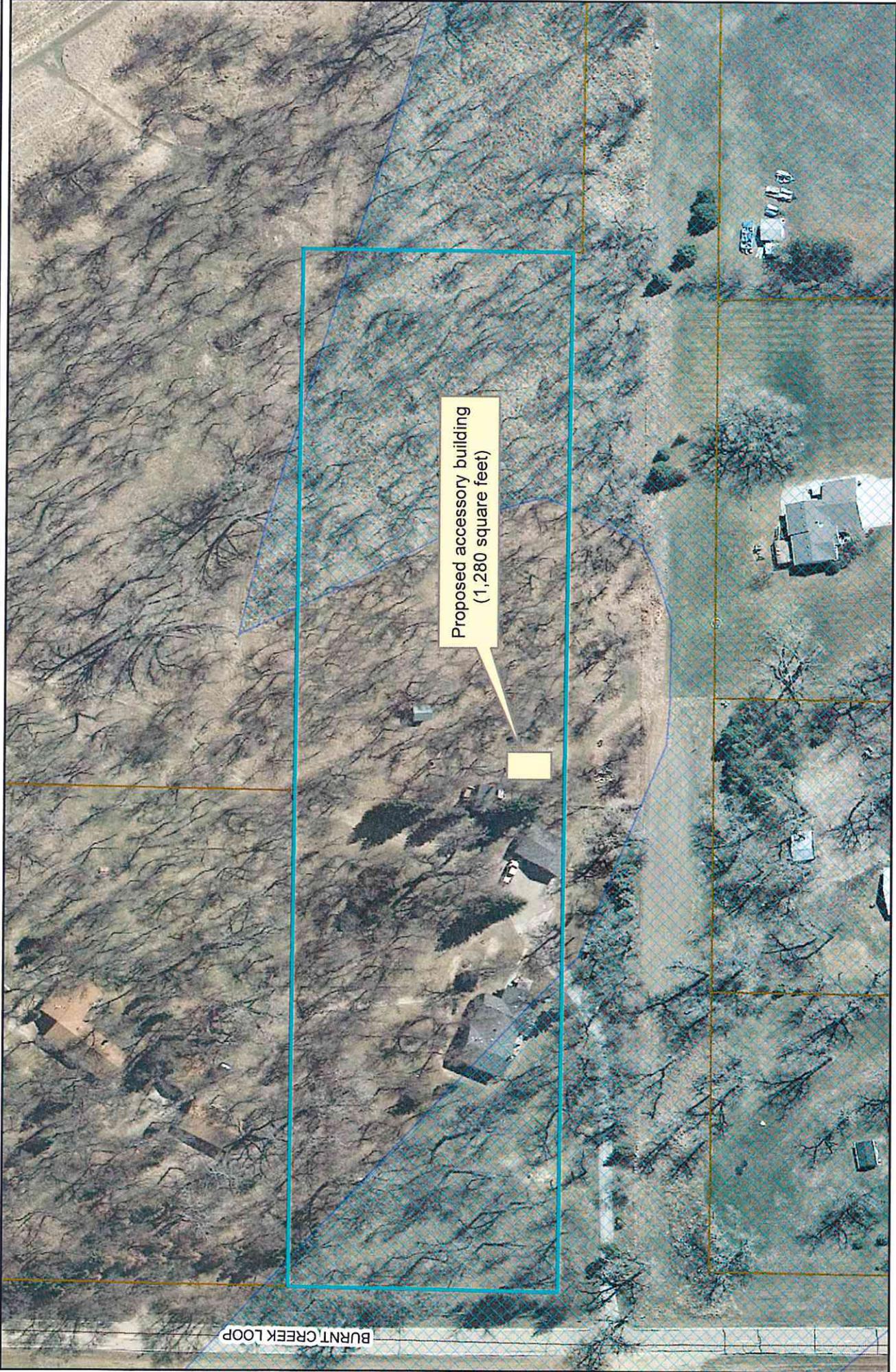


June 15, 2015 (hib)

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**7201 Burnt Creek Loop (Requirements for a building permit)  
Part of the SW1/4 of the SW1/4 of Section 2, Hay Creek Township**



Date: 3/24/2016

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:

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

3. Type of Variance Requested:

4. Applicable Zoning Ordinance Chapter/Section:

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

*See Attached*

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

*See Attached*

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

*See Attached*

Burleigh County Building/Planning/Zoning Department—Variance request narrative

Bill and Marcia Patrie purchased the existing four acre site in 1992. It was then and is currently zoned agriculture. The eastern two acres of the site were part of a common pasture and have at various times during the last 24 years been occupied by horses in the summer months. These two acres and the adjoining 10+ acres are wooded and have annually served as a hunting spot for deer. Bill and Marcia are semi-retired and are now raising chickens on this property—they currently have 16 chickens and sell or give away 5 to 6 dozen eggs per week. Bill has restored a 1949 KB2 International pickup and a 1950 S Case tractor. They also have a compact tractor with a loader and a boat which they have been storing in the neighbor's pole building. (Herman and Janet Muhlbradt). Herman passed away on December 28<sup>th</sup>, 2015. He had previously sold the buildings and asked that Bill and Marcia find another storage facility. In November the Patries applied for a building permit to construct a 32' by 40' pole building. Given the existing structures on the four acres, and the zoning restrictions imposed by the designation as agriculture, the Patries are entitled to construct no more than an additional 800 square feet. They are applying for a building variance to allow the construction of the building of 1,280 square feet. In addition the Patries have had the land surveyed and the elevations recorded. They have agreed to raise the site to 2 feet above flood level or 1642 feet elevation. The Patries have contacted the surrounding 5 land owners who have agreed to the variance request.

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
January 7, 2016**

The Bismarck Board of Adjustment met on January 7, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

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

Member absent was Ken Hoff.

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 December 3, 2015 meeting of the Board of Adjustment.

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

**VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – LOT 4B, BLOCK 1, MEADOWLARK COMMERCIAL 6<sup>TH</sup> ADDITION (4600 NORTH 19<sup>TH</sup> STREET)**

Chairman Marback stated the applicant, Sky 19 Development, LLC, is requesting a variance 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.

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 classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

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

Ms. Wollmuth then gave the following additional information:

1. 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 (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.

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

Chairman Marback opened the public hearing.

Brian Zuroff, Wenck Associates, said early in the design process the applicant was not completely sure what he wanted to do with the facility but Anytime Fitness, a fitness facility, was considered. He said after the design process was complete it was understood from the zoning ordinance that fitness uses are allowed in the DC-Downtown Core district with a parking ratio of 1:200 but that use is not specifically specified for other zoning districts. He said it is considered a public assembly use and their only options are to either add more parking at a large expense or to work with staff on this considering there is a zoning ordinance text amendment relating to off-street parking being proposed by staff. He said they decided to go with the route of requesting a variance as they feel a ratio of 1:200 would be suitable for this use and that a definition of a fitness center just is not defined in the ordinance.

Ms. Clark asked where the proposed text amendment is at in the approval process. Ms. Wollmuth said it is being drafted and parking requirements will be modified based on research and comparisons with other municipalities. She said once it is drafted it is a 3-4 month meeting and approval process.

Mr. Blaskowski said the changes would not only apply to assembly spaces and they are actively being worked on.

Mr. Heier asked how the International Building Code classifies the proposed use. Mr. Blaskowski said it is an assembly use but falls under a different occupancy code that our zoning ordinance has not been updated to accommodate.

Kevin Nelson, Wenck Associates, said the information provided in the agenda packets is based off of usage numbers tracked by Anytime Fitness and the facility is available 24 hours which creates a more level stream of use. He said meeting the assembly use parking requirements would create a lot of parking lot area to be maintained that is not necessarily needed and the owner could modify the lots to accommodate the requirement but the payoff of the excessive parking needed would take several years. He said the ordinance does create a hardship for them as it does not specify for this particular use and he asks for positive consideration of the request.

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

Ms. Clark said this request is not unique by any means, however, the structure is existing and they are trying to use it to the best of its ability. She said they have financial reasons to avoid the requirement given the large amount of concrete that would be needed but with a text amendment being worked on she does not feel the Board of Adjustment

should approve it before that is done. She said if it is denied it should be appealed to the City Commission since they would ultimately have the final say on the text amendment.

Chairman Marback said if there can be a positive outcome from this request then the City Commission could look at it as a positive need with Bismarck being the only jurisdiction with a requirement of 1:60. He said denying the request could be hindering a new business as well as income loss so a decision is needed regardless of by which board.

Mr. Heier said he agrees with the ordinance needing to change but this owner should not be penalized because the change has not been made yet.

Mr. Seifert said he agrees with Ms. Clark especially when considering other businesses and future uses are forthcoming for the rest of the building.

**MOTION:** A motion was made by Mr. Heier to approve the variance 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 for Lot 4B, Block 1, Meadowlark Commercial Sixth Addition (4600 North 19<sup>th</sup> Street), based on the proposed use not defined in the ordinance and the need to accommodate for the difference. The motion was seconded by Ms. Clark and with Board Members Heier, Ubl and Marback voting in favor of the motion and Board Members Clark and Seifert opposing the motion, the variance not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07.

**VARIANCE FROM SECTION 14-03-05 OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS) – LOT 18, BLOCK 3, SATTLER’S SUNRISE ADDITION (4813 KOST DRIVE)**

Chairman Marback stated the applicant, Bryan Binstock, is requesting a variance to allow an accessory building to be placed four feet over top of a 10 foot utility easement located along the southern portion of the property adjacent to the rear lot line.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5 – Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of reasonable use of the property.

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

Ms. Wollmuth then gave the following additional information:

1. A 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.

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

Chairman Marback if a building permit has been issued yet. Ms. Wollmuth said it has not been and would not be issued unless the variance request is approved.

Ms. Clark asked if the variance is from the easement and not the property line. Ms. Wollmuth said that is correct.

Ms. Clark asked if other owners in the neighborhood have built near that same easement. Ms. Wollmuth said it is possible and only those buildings over 120 square feet require a building permit.

Chairman Marback opened the public hearing.

Mr. Binstock said he constructed the building with friends, some of which are contractors, after his storage unit was broken into and he just wanted it done quickly so he could move his items into it. He said City staff told him more than once that it was only a three foot setback requirement from the property line so he actually put the

building four feet away from the property line just to be safe. He said when he went to pull the electrical permit to have it wired he was told it is actually seven feet because of the easement so he contacted the utility companies, had his MDU gas line moved and his done as much as possible to correct the mistake without moving the building. He said if he puts it where it belongs now then he would have to move his MDU line again.

Mr. Heier said the letter from Capital Electric states they are ok with the building but they will not take responsibility for issues now or in the future which he feels could potentially burden future owners of this property.

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

**MOTION:** A motion was made by Mr. Ubl to approve the variance to allow an accessory building to be placed four feet over top of a 10 foot utility easement located along the southern portion of the property adjacent to the rear lot line for Lot 18, Block 3, Sattler's Sunrise Addition (4813 Kost Drive), based on the utility companies having given their consent to the building being placed as it is. The motion was seconded by Mr. Seifert and with Board Members Clark, Seifert, Ubl and Marback voting in favor of the motion and Board Member Heier opposing the motion, the motion was approved and the variance was granted.

#### **PARKING DETERMINATION – PART OF BLOCK 2, CASEY'S COMMERCIAL PARK (1401 EAST INTERCHANGE AVENUE)**

Chairman Marback stated that staff is requesting a parking determination 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.

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

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, i.e. 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.

Ms. Wollmuth said staff recommends reviewing the above information and making a determination if the off-street parking provided for the existing restaurant is acceptable and if the proposed parking determination is not granted, staff further 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.

Chairman Marback opened the public hearing.

Mr. Zimmerman said the proposed patio would be an addition to the restaurant with very unique features but it would not have any new seating. He said they will be moving some seating from the inside to the outside resulting in a net gain of zero new seats. He said this property is 100% developed so he does not have the option to expand his parking. He said he is also surrounded by nearly 700 hotel rooms with their own expansive parking lots which have been allowed to be utilized as overflow parking for his patrons. He said the parking issue came up when he asked for a building permit for the patio addition.

Ms. Clark said if the old parking calculation is used then there is enough and he is adding square footage but not any new seating.

Mr. Hammes said he recommends approaching the request as a variance with the original motion since denial of a parking determination cannot be appealed to the City Commission but denial of a variance can be.

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

**MOTION:** A motion was made by Ms. Clark to approve the variance to reduce the required 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 for Part of Block 2, Casey's

Commercial Park (1401 East Interchange Avenue), based on there not being any room for further parking expansions and the concept is in harmony with the rest of the neighborhood. The motion was seconded by Mr. Seifert and with Board Members Clark, Heier, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

## **OTHER BUSINESS**

### **BYLAWS OF THE BOARD OF ADJUSTMENT**

Ms. Wollmuth said the change requests she has received are minimal and the Board can act on the bylaws now or wait until those changes are made.

Ms. Clark asked if amendments can still be made at this time followed immediately by approval of the bylaws.

Ms. Wollmuth said they would need to be adopted prior to any amendments being made.

**MOTION:** A motion was made by Ms. Clark to approve the bylaws of the Board of Adjustment as presented. The motion was seconded by Mr. Seifert and with Board Members Clark, Heier, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the bylaws of the Board of Adjustment were adopted.

### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:54 p.m. to meet again on February 4, 2016.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman