

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
September 1, 2016**

The Bismarck Board of Adjustment met on September 1, 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, Chris Seifert, Ken Heier, Rick Wohl and Michael Marback.

Member absent was Ken Hoff.

Staff members present were Brady Blaskowski – Building Official, Jason Hammes – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

**MINUTES:**

Chairman Marback called for approval of the minutes of the August 4, 2016 meeting of the Board of Adjustment.

Mr. Heier pointed out a mistake on the last page regarding the date of the next meeting of the Board of Adjustment. Ms. Balzum said the correction will be made prior to publishing the minutes.

**MOTION:** A motion was made by Mr. Heier and seconded by Mr. Seifert to approve the minutes of the August 4, 2016 meeting, with the suggested correction. With Board Members Clark, Marback, Seifert, Wohl and Heier voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-04-06(4) OF THE CITY CODE OF ORDINANCES (R10-RESIDENTIAL)(LOT AREA) – LOTS 1-2, LESS THE EAST 65 FEET, BLOCK 9, FLANNERY AND WETHERBY ADDITION (1215 EAST AVENUE F)**

Chairman Marback stated the applicant, Amy Bleier, is requesting a variance to construct a detached 484 square foot accessory building, which would replace an existing attached garage that is proposed to be demolished, on a lot that is considered to be non-conforming due to its size.

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 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.

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

Mr. Wohl said the sketch shows the new garage would only be six feet away from the house and asked if they should include a variance that would reduce the rear yard setback from 20 feet to six feet in the motion.

Ms. Wollmuth said that provision of the zoning ordinance so if it would be appropriate to add that to the approval as well.

Ms. Bleier provided pictures of the house with the attached garage and said the new garage will go over the footprint of the existing one, but will extend slightly further to the east. She said water comes through the roof of the garage, the wood is rotting and the foundation is badly cracked. She said it is also putting pressure on the house which is causing large cracked in the internal walls so approval of this request would help improve her home and solve a lot of problems with the house as well.

Chairman Marback opened the public hearing.

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

**MOTION:** A motion was made by Ms. Clark to approve the variance to construct a detached 484 square foot accessory building, which would replace an existing attached garage that is proposed to be demolished, on a lot that is considered to be non-conforming due to its size and to reduce the required rear yard setback to from twenty (20) feet to six (6) feet on Lots 1-2, less the East 65 feet, Block 9, Flannery and Wetherby Addition (1215 East Avenue F), based on the age of the home and the neighborhood and the change being an

improvement to the property. The motion was seconded by Mr. Seifert and with Board Members Clark, Heier, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-04-01(10) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL)(ACCESSORY BUILDING) – LOT 4, BLOCK 3, HIGH TOP ACRES SECOND SUBDIVISION (7201 MOONSTONE LANE)**

Chairman Marback stated the applicant, Jeff Anderson, is requesting a variance to increase the side wall height of an accessory building currently under construction from fourteen (14) feet to sixteen (16) feet.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning 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 said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board. She then said multiple comments have been received from neighboring property owners and copies of each of them have been provided to the board members.

Chairman Marback asked if the permit that was issued stated any specific building information on it. Ms. Wollmuth said the permit did not specify the side wall height.

Mr. Heier suggested adding more information to these permits, such as the structure being limited to one story and the building specifications. Ms. Wollmuth said the process has changed somewhat recently and these types of permits actually go through a formal review process by the residential plans examiner rather than being issued over the counter.

Mr. Anderson said he asked how high the side wall could be when he applied for the permit and he was told 16 feet so that is what he went with. He said he was told the side wall height was fine but then it failed at the framing inspection.

Mr. Seifert said some comments from the neighboring owners have included the side wall height restriction was known and that with Mr. Anderson himself being a builder should have known what he was limited to. He then asked how many buildings like this he has built and how many have had a 16 foot side wall.

Mr. Anderson said he has constructed buildings similar to this in the past but this is the only one with a 16 foot side wall.

Mr. Heier said some residents reference the restrictions and conditions portion of their covenants and asked if he is familiar with that information. Mr. Anderson said he is not familiar with those and went by what he was told was ok in the beginning of the process.

Mr. Heier said the building is under the maximum height restriction of 25 feet so it is just the side wall that is causing the violation.

Chairman Marback opened the public hearing.

Brenda Muscha, 7224 Moonstone Lane, said her main concern is that this building looks like a large farm shop and the owner has had since July to correct this issue. She said she submitted comments to the Planning Division and she would like this request to be denied. She said it is not fair for somebody to create a violation and then then ask for forgiveness when it is too late and it makes the property look very sloppy. She said she is happy to see development, but the building is just too big.

Faron Kastner, 7117 Moonstone Lane, said he lives directly south of this property and was out of town when it was constructed. He said he is opposed to the location because when they walk out of their house, the building is all they see. He said he is confident that the owner was aware of the side wall restriction and that he even knows the building requirements, without being a builder. He said they were mistakenly omitted from receiving an adjacent property owner notification and the Planning Division worked to correct that. He then said this owner has built enough homes to know the ins and outs of the requirements and he has also not seen the permit clearly posted on at the location as it is required to be. He said he also does not feel the other lots owned by Mr. Anderson are adequately maintained.

Additional written comments in opposition to this request are attached as Exhibits A-E.

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

Ms. Clark said in her experience on this board, she does recall a couple of ways to fix this problem included filling in with dirt or landscaping and asked if those would be options

here. She said a lot of the comments received in opposition to this request are of non-compliance by the owner and asked what the general timeline is of how this issue came together.

Mr. Blaskowski said the building was permitted and the issue was discovered on August 11<sup>th</sup> during a framing inspection, at which point the owner had to stop any further work on the structure.

Chairman Marback said one statement made was regarding the height of a camper that the owner wants to put in the building, but he has seen buildings with a 14 foot side wall hold a large camper if the trusses are done right, so that cannot be used as an excuse here.

Mr. Heier asked if there is an issue with how the building is located on the property. Mr. Blaskowski said it is not, that the setback requirements are all being met with where it is located.

Ms. Clark said if they permitting process has changed, is it still possible that this mistake could be made again.

Mr. Blaskowski said it is possible that the indicated conversation with a staff member and the owner took place and the owner could have been told that a 16 foot side wall was an option. He added that staff is experienced and trained to answer those questions appropriately as much as possible. He said processes have been put in place to avoid oversights like this going forward.

Mr. Heier said it would be impossible to list all of the things somebody cannot do, but there is a history of why these requirements are in place such as wanting to avoid overhead living units and things of that nature. He then asked if the wind load requirements are being met with how the building is constructed right now.

Mr. Blaskowski said he would need to check into that further but the inspector did not make mention of an issue regarding the wind load requirements.

Ms. Clark asked what will happen if this request is denied since it is already framed and mostly constructed. Chairman Marback said it can be appealed to the City Commission or the owner can remove the roof and shorten the walls somehow. He said either way it could still be the same height at the peak, but the side wall would then be in compliance.

Ms. Clark said she understands the neighbors' frustrations and she takes them seriously. She said because the problem can be fixed, although it will be costly, there is not a uniqueness to the property to need a variance. She said there is not any proof that the owner knew it would be an issue, but it is still a violation.

Mr. Seifert said there are other very large buildings near this location and their side wall height cannot be judged just by looking at them, but they are likely in compliance.

Mr. Wohl said he noticed the same thing and also noticed many have doors that are higher than the side wall, so it can be done correctly.

Chairman Marback asked how the building is being constructed before the house. Mr. Blaskowski said the permits were issued at the same time and the footings for the house have been poured.

**MOTION:** A motion was made by Ms. Clark to deny the variance to increase the side wall height of an accessory building currently under construction from fourteen (14) feet to sixteen (16) feet on Lot 4, Block 3, High Top Acres Second Subdivision (7201 Moonstone Lane). The motion was seconded by Mr. Wohl and with Board Members Clark, Heier, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was denied.

**VARIANCE TO INCREASE THE TOTAL AREA OF ACCESSORY BUILDINGS – PART OF LOT 1, BLOCK 1, STONECREST 2<sup>ND</sup> ADDITION (3336 JERICHO ROAD)**

Chairman Marback stated the applicant, Liechty Homes, Inc., is requesting a variance to increase the size of a proposed accessory building to 1,500 square feet.

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 RMH-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.

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

Chairman Marback asked if approval of this request would keep the property under the 40% maximum lot coverage restriction. Ms. Wollmuth said because it is a mobile home

court, there are not set lot lines so it is considered one large lot, but she can find out what percentage this would bring the coverage to.

Chris Tietz, Liechty Homes, Inc., said the garage will be the same height as the home and they are strict on making sure everything they construct looks nice and is tastefully done.

Chairman Marback opened the public hearing.

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

Chairman Marback said approving this request would put the garage over by 300 square feet in excess of what would potentially be approved by the zoning ordinance text amendment that is scheduled to go to City Commission soon.

Mr. Heier said that much square footage of accessory buildings is more generous than most of the other zoning districts.

Chairman Marback asked if the limited size can be indicated with the motion. Ms. Wollmuth said that would be fine and that the motion should mirror the zoning ordinance that is going to City Commission soon.

Mr. Heier asked if the owner would be ok with a lesser square footage. Mr. Tietz said they would prefer to keep it at 1500 square feet as the concrete has been poured for it.

Mr. Blaskowski said concrete does not require a permit, that the structure would require a permit and that a concrete inspection is part of that process. He said he does not have any record of a permit for a concrete slab or a structure at that location.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to increase the maximum allowable square footage of accessory buildings to 1,200 square feet, not to exceed forty percent (40%) lot coverage, with a maximum of 12-foot sidewalls on Lot 1, Block 1, Stonecrest 2<sup>nd</sup> Addition (3336 Jericho Road), based on the zoning ordinance text amendment going through the approval process and the requirements of the construction of the accessory building having to mirror the new zoning ordinance. The motion was seconded by Ms. Clark and with Board Members Clark, Heier, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

## **OTHER BUSINESS**

Ms. Wollmuth said a request for variances from Section 14-04-09(9) of the City Code of Ordinances (HM – Medical Facility District) to reduce the required rear yard setback along the west side of the property from ten (10) feet to one (1) foot and from Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required off-

street parking to thirty-two (32) spaces in order to construct an addition to the existing facility for Tract 500 being a part of Blocks 27 and 38, Northern Pacific 2<sup>nd</sup> Addition, previously approved in June, 2014 has expired, as a variance granted expires after 24 months. She said the applicant, Bismarck Cancer Center, has not yet started the desired work and is asking for an extension of their variance approval. She said a site plan has been submitted and the addition will be smaller than originally proposed, but they do still need the variances.

**MOTION:** A motion was made by Mr. Seifert to reapprove the variances from Section 14-04-09(9) of the City Code of Ordinances (HM – Medical Facility District) to reduce the required rear yard setback along the west side of the property from ten (10) feet to one (1) foot and from Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required off-street parking to thirty-two (32) spaces in order to construct an addition to the existing facility for Tract 500 being a part of Blocks 27 and 38, Northern Pacific 2<sup>nd</sup> Addition, extending the variance approval for another 24 month period. The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was reapproved.

#### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:58 p.m. to meet again on October 6, 2016.

Respectfully Submitted,

  
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Hilary Balzum  
Recording Secretary

APPROVED:

  
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Michael Marback, Chairman

**Hilary Balzum**

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**From:** Terri Fleming <tflemings90@gmail.com>  
**Sent:** Thursday, August 25, 2016 7:17 PM  
**To:** Planning - General Mailbox  
**Subject:** VAR2016-017

Thank you for the letter regarding this variance. I drove by the location and was surprised to see that the building was already constructed. Isn't it too late? If the sentiment at the hearing is sufficiently negative, would you really make him tear it down anyway? If not, then the hearing is really just a pretense.

I wonder if the owner built the building first in order to leverage the city to approve the variance? If so, then to prevent that, the city should consider denying the variance to send a needed message.

I have no specific opposition to the variance, if the premature construction was an honest oversight.

James Fleming

PS - the etrakit link in the letter was not working.

## Hilary Balzum

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**From:** Planning - General Mailbox  
**Sent:** Monday, August 29, 2016 12:31 PM  
**To:** Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings  
**Subject:** FW: Variance Request  
**Attachments:** image1.JPG; image3.JPG; image4.JPG; ATT00001.txt

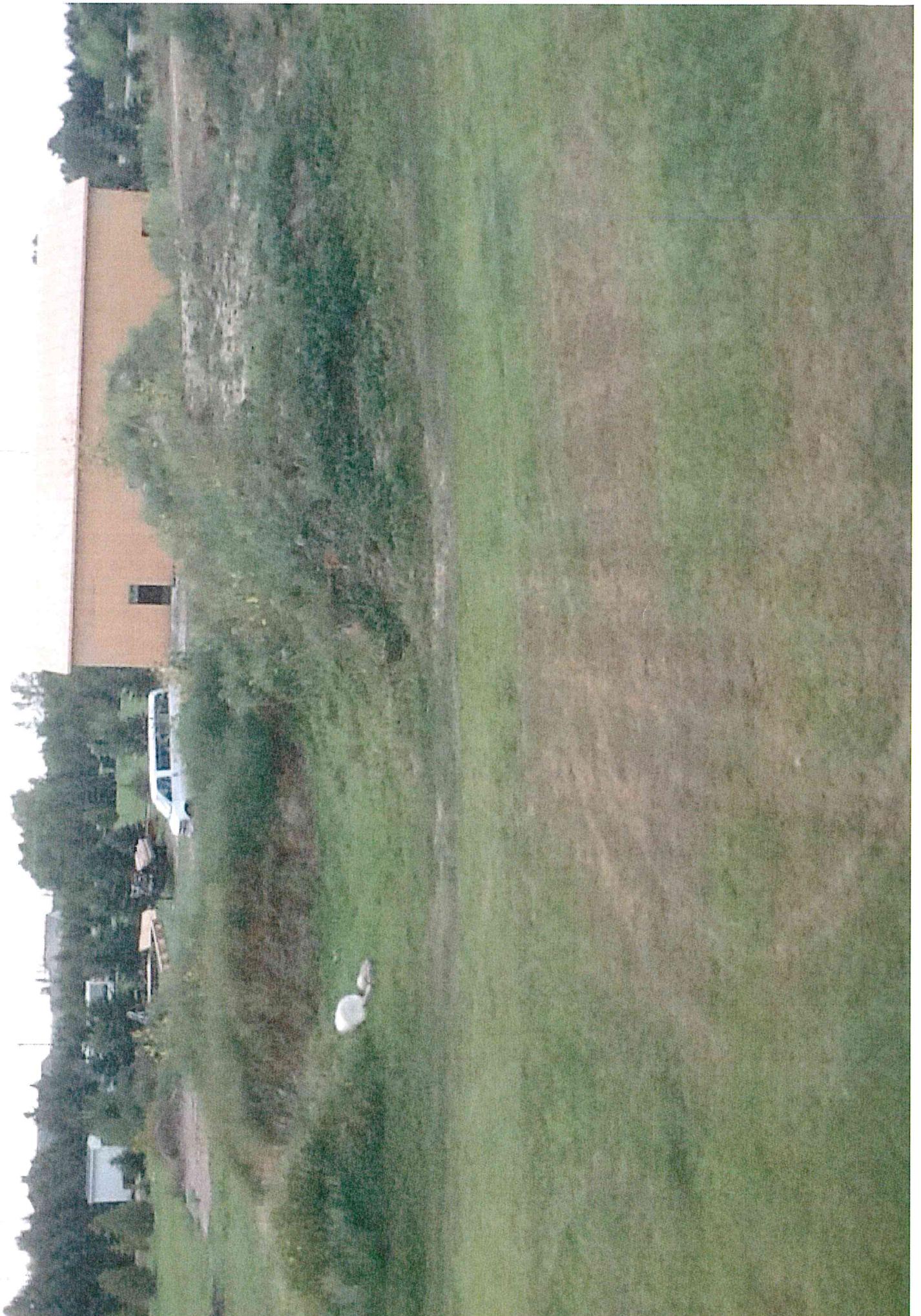
-----Original Message-----

From: Jan Kville [\[mailto:jkville@bjs.midco.net\]](mailto:jkville@bjs.midco.net)  
Sent: Monday, August 29, 2016 10:43 AM  
To: Planning - General Mailbox  
Subject: Variance Request

Concerning Jeff Anderson request for a variance for accessory building:

1. A building that large should be on a industry site not residential.
2. I feel this will decrease the value of my property.
3. A building of this height is an eye sore, in a residential area.
4. I am 100 percent against a building of 16 ft high in our subdivision that why the City Code of Ordinance were developed to prevent a situation such as this.

Jeff Anderson is the developer of these lots...plus a home builder, he should know what the City Code of Ordinances are. He should read the 'Restrictions and Conditions ' number 3 of his own ordinance. He has 3 lots and 2 of them have fallen into disrepair, I've lived here 13 years and nothing has changed it just gets worse.







## Hilary Balzum

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**From:** Planning - General Mailbox  
**Sent:** Thursday, September 01, 2016 8:58 AM  
**To:** Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings  
**Subject:** FW: Project number VAR2016-017  
**Attachments:** Document1.docx  
**Importance:** High

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**From:** Cathy Vetter [<mailto:cvetter1@bis.midco.net>]  
**Sent:** Wednesday, August 31, 2016 7:51 PM  
**To:** Planning - General Mailbox  
**Subject:** Project number VAR2016-017  
**Importance:** High

Please see the attached letter in regards to our objection to allow Jeff Anderson to increase the maximum sidewall height. We are unable to attend the meeting as we both work past 5:00pm.

Thanks,

Shannon and Cathy Vetter

Project number VAR2016-017

This is in regards to the letter that we received to allow Jeff Anderson to increase the maximum sidewall height of an accessory building to 16 feet. **I don't believe that he should be allowed to increase his sidewalls.** He was the developer of the land and helped to make some of the restrictions for the property area. Therefore he was well aware of the restrictions in this area and should have asked permission prior to constructing the accessory building or just followed the restrictions.

When we built our shed, we fully knew the restrictions of the property, as did Jeff, and followed the proper channels to be able to build what we asked for. We went around to the neighbors prior to constructing our property to make sure that everyone was okay with what we were doing and obtain the correct signatures. We never went over size however since we did not have our home built, we had to have approval at the time to build the shed.

Jeff knowingly constructed the property outside the restrictions in the hopes that no one would enforce the restrictions since it was already built. If he did not feel this way, he would have followed the proper channels or just built within the restrictions.

Also per the county ordinance, you are only allowed one approach into your property. If you come and look at this property, there are two approaches going into the property, one where I assume the house will be built and the second where the constructed shop is.

There are restrictions and county inspections for a reason and if we continue to allow people to go outside of them then there is no reason to enforce them. **This will set precedence for the future for others to just build and not take into consideration the restrictions. If one can do it then why can't others.**

Sincerely,

Shannon and Cathy Vetter

## Hilary Balzum

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**From:** Planning - General Mailbox  
**Sent:** Thursday, September 01, 2016 11:56 AM  
**To:** Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings  
**Subject:** FW: var2016-017

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**From:** Jody Bencker [<mailto:bencker@hotmail.com>]  
**Sent:** Thursday, September 01, 2016 11:51 AM  
**To:** Planning - General Mailbox  
**Subject:** var2016-017

We just received the notice in the mail today. Jeff Anderson has already constructed this building, I don't think you should break the law then ask for the law to be changed.  
Thank you.

## Hilary Balzum

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**From:** Planning - General Mailbox  
**Sent:** Thursday, September 01, 2016 4:13 PM  
**To:** Hilary Balzum  
**Subject:** FW: Jeff Anderson 7201 Moonstone Lane

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**From:** Brenda Muscha [mailto:[brenda\\_muscha@hotmail.com](mailto:brenda_muscha@hotmail.com)]  
**Sent:** Thursday, September 01, 2016 3:22 PM  
**To:** Planning - General Mailbox  
**Subject:** Re: Jeff Anderson 7201 Moonstone Lane

To the Bismarck Board of Adjustment,

Please deny the variance request for the very large shop being built at 7201 Moonstone Lane. Your paperwork shows that the surveyor was out in October of 2015. If Jeff Anderson wanted a variance to the City Code, he had months & months to ask for it BEFORE he started construction. What is the point in having rules if people can build whatever they want? Jeff currently resides on Moonstone Lane. His current home contains a shop with the appropriate wall height. Obviously he knew the Code and simply ignored it.

I live at 7224 Moonstone Lane. Jeff Anderson owns the 2 undeveloped lots to the south of my property. One on each side of the road which includes 7201 Moonstone Ln. I've had to deal with him not maintaining these lots for the past 15 years. Now when he finally gets around to developing at least one of the lots, he puts up a shop so big that that it violates the City Code. If he is allowed to get away with this violation, what will stop him from breaking another rule? He certainly hasn't bothered to follow the "Restrictions & Conditions" for High Top Acres that he signed with his wife in August of 1995. Rules are rules. He should have to follow them just like everyone else.

I ask that you please stand firm and deny his request to change the sidewall height to 16 feet.

Thanks,  
Brenda Muscha

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