



*Community Development Department*

**BISMARCK BOARD OF ADJUSTMENT  
MEETING AGENDA  
JULY 1, 2010**

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Tom Baker Meeting Room

4:00 p.m.

City-County Office Building

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**MINUTES**

1. **Minutes.** Consider approval of the minutes of the June 3, 2010 meeting.

**REQUESTS**

2. **10410 LILLY DRIVE** (Wendlin Platz) Request for a variance to reduce the side yard setback from 15-feet to 9-feet for the purpose of constructing a detached garage at the above-mentioned property.

**OTHER BUSINESS**

3. **Discussion** regarding setback requirement language in the Ordinance.
4. **Introductions** of the Board of Adjustment members.

**ADJOURNMENT**

5. **Adjourn.** The next regular meeting date is scheduled for August 5, 2010.

*Bismarck-Burleigh County Community Development Department*

221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • [www.bismarck.org](http://www.bismarck.org)



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
JUNE 3, 2010**

The Bismarck Board of Adjustment met on June 3, 2010 at 4:00 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Ken Heier, Dean Conrad, and Jeff Ubl.

Staff members present were Ray Ziegler (Building Official), Mel Fischer (Environmental Health Administrator), Gregg Greenquist (Planner), and Kim Riepl (Office Assistant).

Others present were Donald Rohrich, 4013 Heartland Drive, Bismarck; Kenneth Connell, 1414 S. 3<sup>rd</sup> Street, Bismarck; and Cindy Connell, 1414 S. 3<sup>rd</sup> Street, Bismarck.

**CALL TO ORDER**

Chair Marback called the meeting to order and announced the introduction of new members to the Board of Adjustment as the first order of business. He introduced Dean Conrad and Jeff Ubl and welcomed them both to the Board of Adjustment.

**MINUTES**

Chair Marback asked for consideration of the May 6, 2010 minutes.

**MOTION:** A motion was made by Ms. Clark and seconded by Mr. Ihmels to approve the minutes of the May 6, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

Ken Heier entered the meeting.

**APPEAL OF NOTICE & ORDER – KENNETH CONNELL – 1414 S. 3<sup>RD</sup> STREET**

Chair Marback noted the request was an appeal for the Notice & Order issued on May 5, 2010, by Mel Fischer, Environmental Health Administrator for the City of Bismarck. He called on Mr. Fischer to provide further details.

Mr. Fischer stated that the Notice & Order was issued May 5<sup>th</sup> to Mr. and Mrs. Connell as a result of a May 4th complaint received regarding vehicle parts, tires, a trailer that was filled with garbage and rubbish, as well as debris on the property. The complainant also indicated there were five dogs on the premises. Upon investigation, a camper was parked in the backyard at the time which appeared may be occupied. The trailer with rubbish and debris was verified. A Notice & Order was issued at that time citing the conditions with instructions to clean the area within fifteen days of the Connell's receipt of the Order, and if, in fact, the camper was being lived in, this was not appropriate in a residentially zoned area and would have to be moved to an RV camping facility. The number of dogs being kept on the premises could not be ascertained, but information was provided (to the Connell's) for a special pet permit for which there are

provisions, if indeed there were more than three dogs being kept. Mr. Fischer indicated that photos of the condition of the premises were included in the packet along with the complaint history for review.

Mr. Marback asked if Mr. Fischer had conducted a follow-up visit to the premises, and Mr. Fischer replied he had, on June 3<sup>rd</sup>, and that the property had been cleaned up considerably, at which time he supplied photos for the Board members' inspection. Mr. Fischer cited specific areas that still needed to be addressed, saying a complaint had just been received regarding the long grass in the easement area at the rear of the yard as well as a vehicle remaining in the back yard and some material alongside the house and some tree branches and other material in the back. Mr. Fischer referenced Section 14-05-5.1 of the City Ordinance which addresses inappropriate storage in yards, copies of which he distributed for review.

Chair Marback asked Mr. Connell if he had anything to add. Mr. Connell explained that the camper was not occupied, that the roof had leaked and the windows were open to dry it out. He addressed the number of dogs by saying they only have three dogs, one of which they are keeping temporarily as it belongs to their daughter. He stated the trailer contains rubbish and debris from a bathroom remodeling project in process and materials from cleaning up the back deck which the dogs had trashed over the winter. He further stated that the chairs from the deck are along the side of the gazebo now while he continues to refinish the deck and the jeep is a project they bought for their seventeen year old son, which they need to work on to get running.

Mrs. Connell supplied additional comment regarding the complaints she felt were unreasonable and harassing that had been made by the neighbors.

Mr. Connell then addressed the long grass in the easement saying with the frequent rainfall lately he had been unable to mow, but had mown it the week prior, before going camping.

Ms. Clark inquired of the Board members and staff what the standard for review in an appeal case was to be, and if the information provided was to be evaluated as a whole or otherwise. Mr. Fischer stated the reason for this type of appeal to come before the Board of Adjustment is that it is a violation of an existing zoning ordinance. The Board's task is to then determine if a hardship exists in order to honor the appeal, and if there is no hardship, then the applicable section of the ordinance would be followed and the Notice & Order upheld. The facts represented in the reports resulting from investigated complaints would be assumed to be correct.

Mr. Greenquist supplied the reading of the section of the City Ordinance pertaining to appeals, Section 14-06-03, which is as follows:

#### 14-06-03. Appeal Procedure.

1. Appeal - How taken: An appeal to the board of adjustment may be taken by any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Building Official based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Building Official and with the board of adjustment a notice of appeal and specifying the grounds thereof. The Building Official shall forthwith transmit to the board all the papers

constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Building Official certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Building Official and on due cause shown.

2. 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 this article and give due notice thereof to interested parties, and make all decisions within a reasonable time. Upon any hearing, any party may appear in person or by agent or attorney. The concurring vote of four members of the board shall be necessary to reverse an order, requirement, decision or determination of the Building Official or other official, or to decide in favor of the applicant any matter upon which it is required to pass under this article. The board shall adopt rules of procedure and shall keep records of applications and action thereon, which shall be a public record.

Ms. Clark asked Mr. Fischer if all the complaint elements had been rectified and Mr. Fischer replied that with the exception of the remaining jeep, furniture and tree limbs, the property was much improved. Mr. Heier added that he had been to see the property and that he saw the chairs in the yard and could smell the old gas, noting it was obvious the Connell's had been working on complying with the Notice & Order. He then asked the Connell's if the trailer and the camper would be returned to the property for parking. The Connell's replied that yes, the camper and trailer would be brought back for parking and to be used as their remodel projects progress. Mr. Connell noted the trailer is emptied of its contents on a regular basis. Mr. Heier reiterated that the camper cannot be occupied at any time once it is returned to the property and that rubbish cannot be allowed to remain in the trailer.

**MOTION:** A motion was made by Mr. Heier to uphold the Notice & Order. Mr. Ihmels seconded the motion and with all members voting in favor, the motion to uphold the Notice & Order was passed, thus denying the requested appeal.

Chair Marback declared the letter of appeal denied based on lack of hardship. He informed Mr. and Mrs. Connell that they must maintain compliance with the order issued by Environmental Health within a fifteen-day period, the start date of which would be supplied to the Connell's in a letter, based on the opinion of the City Attorney.

#### **VARIANCE – DONALD ROHRICH – 4013 HEARTLAND DRIVE**

Chair Marback stated the applicant was requesting a variance to reduce the rear yard setback from 50-feet to 20-feet for the purpose of constructing an accessory building on the property at 4013 Heartland Drive. He asked Mr. Rohrich if there was anything he cared to add. Mr. Rohrich declined, saying everything should be in the application.

It was discussed and agreed that geographical features of the property do present a hardship, specifically citing the water drainage and the trees.

Mr. Greenquist noted a discrepancy in the packet concerning the size of the accessory building and emphasized that the correct size was 30-feet by 40-feet. Mr. Rohrich confirmed that, adding that he originally had wanted to build a structure that was 40-feet by 45-feet, but decreased the overall size to enable him to access the trees and perform snow removal more easily.

Ms. Clark asked if Mr. Rohrich had spoken with any of his neighbors (specifically on Rawhide Drive) regarding the accessory building and Mr. Rohrich replied that he had. He stated his neighbor to the east understood exactly why he was applying for the variance as they have the same water problems and the neighbor behind him was just curious as to why he had applied but had no problem with it. Mr. Marback asked if any comments had been received either in opposition to the variance request or in support of it, and it was noted that no comments had been received.

Mr. Conrad questioned ownership of the trees to the south and Mr. Rohrich replied those do belong to his neighbor on the south, who he'd just spoken with the previous weekend and all the other trees lie on Mr. Rohrich's property.

Mr. Greenquist referenced the aerial photo of Mr. Rohrich's property which had been included in the packet. He noted the approximate property lines are indicated in white and the 30x40 shop was drawn to scale so that the Board could ascertain the location of the accessory building.

Mr. Ihmels asked then what the absolute need for the variance was and if it was to obtain a twenty-foot rear yard setback. Mr. Ziegler replied that to be correct, that according to the zoning in that rural setting, a fifty-foot minimum rear yard is required to maintain that rural look. Mr. Ihmels questioned the reference in the ordinance to 20% of the depth of the lot, which, in this case, would be more than fifty-feet. Mr. Heier questioned the 20% as well, to which Mr. Ziegler replied that calculation really hasn't been used in quite some time, and the standard used is the fifty-foot minimum.

Mr. Rohrich informed the Board that due to the height of the surrounding trees, the proposed building wouldn't even be visible except from the front of his house.

Mr. Ubl asked if the ditch was natural and Mr. Rohrich acknowledged that it was, but had been somewhat enhanced to contain the water.

The following findings were provided:

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 zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

**MOTION:** A motion was made by Mr. Ihmels to approve the request for the variance to reduce the rear yard setback from 50-feet to 20-feet. Mr. Conrad seconded the motion and with all members voting in favor, the motion to approve the variance was passed.

#### **OTHER BUSINESS**

General discussion took place regarding the usage of lot percentages to determine setback requirements. It was determined when both options exist there is a natural tendency to use the straight footage minimums rather than the percentage calculations. It was also noted that when the percentage calculation was used, it was confusing and resulted in inaccuracies involving the field inspections. The idea of amending the ordinance to remove the percentage calculations was discussed and Mr. Greenquist offered to provide excerpts from the ordinance for further review and discussion at the next Board of Adjustment meeting.

#### **ADJOURNMENT**

There being no further business, the meeting of the Bismarck Board of Adjustment was adjourned to meet again on July 1, 2010.

Respectfully Submitted,

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Kim Riepl  
Recording Secretary

APPROVED:

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Michael Marback, Chair



**BISMARCK-BURLEIGH COUNTY COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

**BACKGROUND:**

**Title:**

10410 Lily Drive – Side Yard Setback Variance (15-feet to 9-feet)  
(Lot 11, Block 1, Prairiecrest First Subdivision)

**Status:**

Board of Adjustment

**Date:**

July 1, 2010

**Owner(s):**

Wendlin Piatz

**Reason for Request:**

Applicant wishes to construct a detached garage proposed for nine-feet from the side property line - - because of the location of the septic system drainfield and a steeply sloped lot.

**Location:**

Take Highway 83 north to 110<sup>th</sup> Ave. NE (which is 3-miles north of the light at Hwy 1804/71<sup>st</sup> St.), go west on 110<sup>th</sup> to Lily Drive (0.4 mile), go south on Lily Drive to the intersection of Violet Lane (0.4 mile), the property will be on your right.

**Applicable Provision(s) of Zoning Ordinance:**

Section 14-04-01(5): Side yard. Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot, and in no case less than fifteen (15) feet per yard. *(note: this lot is 200-feet wide, the other side yard is over 60-feet)*

**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 zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

**RECOMMENDATION:**

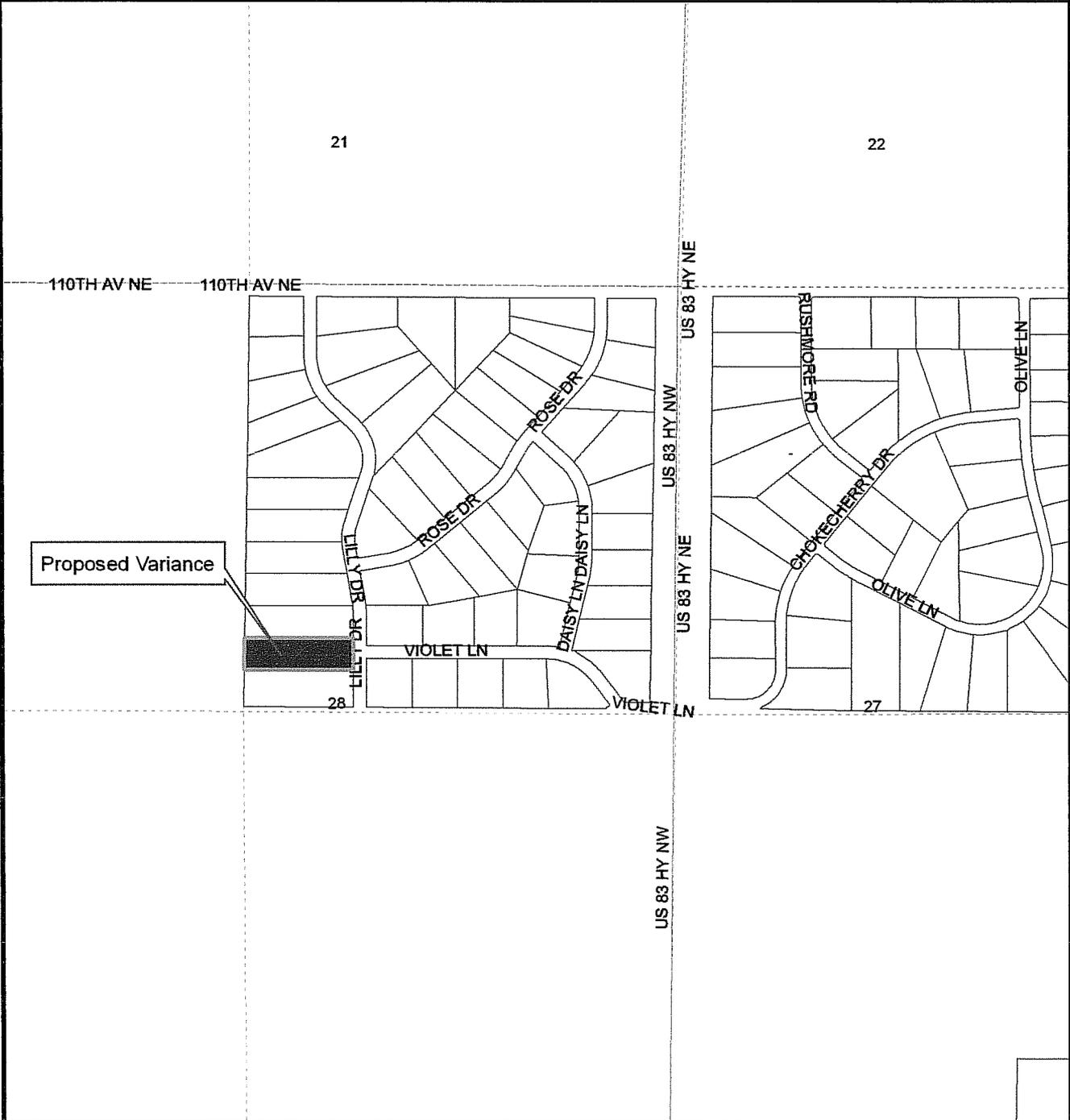
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance

## Lot 11, Block 1, Prairiecrest First Subdivision

### 10410 Lilly Drive



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Map was Updated/Created: June 17, 2010 (klr)

Source: City of Bismarck



1:50000

# Bismarck

CITY OF BISMARCK  
BUILDING DIVISION  
221 N 5TH ST  
BISMARCK, ND 58506-5503  
PH (701) 355-1465

NS  
5/26/10  
advised of denial

## CITY OF BISMARCK / ETA & BURLEIGH COUNTY



RECEIVED DATE: 5-21-2010

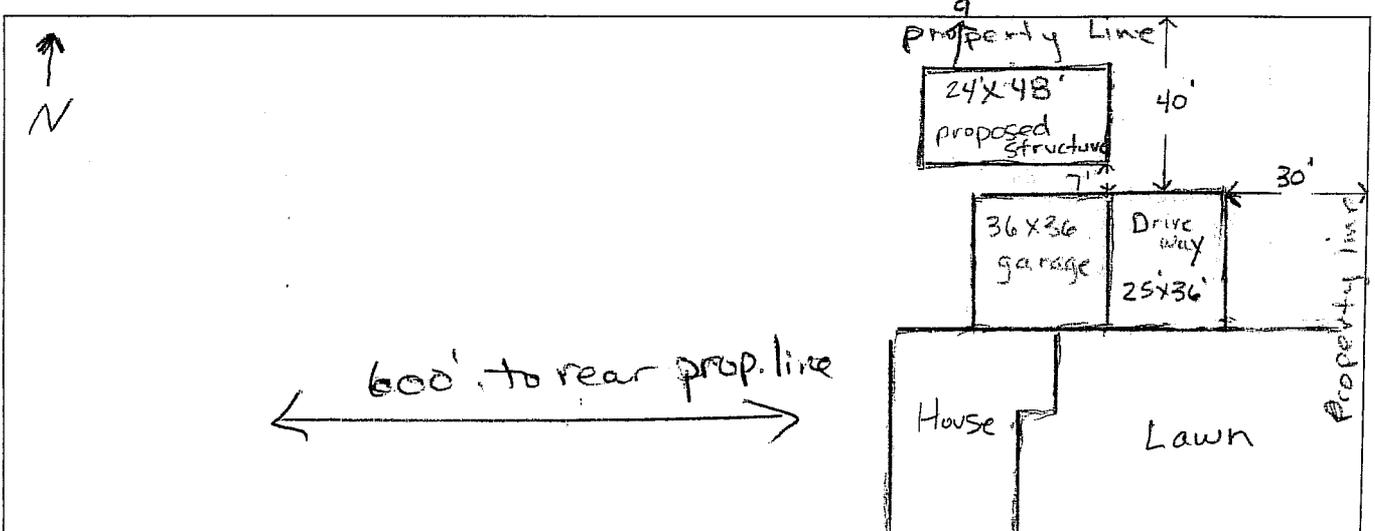
### CONTACT INFORMATION:

- 1. Name: Wendlin Platz
- 2. Phone Number: 701-751-2679
- 3. Property Address: 10410 Lilly Dr Bismarck, ND 58503

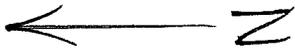
- 4. Location of Property:  City of Bismarck  ETA  Burleigh County  
Reduce North (sideyard) setback from 15' to 9'

5 Reason for variance Would like to build a detached garage.  
All other space available has either trees, vegetation,  
septic system or is sloped too much. Please grant  
a variance to allow a 24'x48' structure to be built  
9 feet from the property line. 3.1 Acres

6. In the space below, please draw your lot, all existing buildings located on your lot and the proposed structure. Include dimensions of buildings, distance between buildings and your property lines.



Dick & Sheila Gutman reside at 10430 Lilly Drive. We do not have any issues with this plan. Bleck Q. Gutman Rural P. Aut 5-22-10



VIOLET LN

LILLY DR



existing house

N



10

11

12



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

1. Property Address or Legal Description:

Lot 11 Block 1 Prairiecrest 1<sup>st</sup>

2. Location of Property:

City of Bismarck

ETA

Burleigh County

3. Type of Variance Requested:

Sideyard setback reduction

4. Applicable Zoning Ordinance Chapter/Section:

14-04-01 Section 5

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.)

All other areas of the property have limitations due to steepness, or accessibility.

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

The limitations create too narrow of space to build on.

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

The variance requested will allow accessibility to the rest of the property, including room for the proposed structure.

Variance Request

For: Wendlin Platz  
10410 Lilly Dr.  
Bismarck, ND 58503

Name: Justin Krueger

Name: \_\_\_\_\_

Address: 10335 Lilly Dr.

Bismarck, ND 58503

I am aware of Wendlin Platz's variance request and have seen his plan.  
I have NO issues with the plan and see NO problems with allowing the  
variance.

Justin Krueger  
Signature

6-13-10  
Date

[Signature]  
Signature

6-13-10  
Date

**Variance Request**

**For:** Wendlin Piatz  
10410 Lilly Dr.  
Bismarck, ND 58503

**Name:** Pice & Sheila Gutzmer

**Name:** \_\_\_\_\_

**Address:** 10430 Lilly Dr  
Bismarck ND

**I am aware of Wendlin Piatz's variance request and have seen his plan. I have NO issues with the plan and see NO problems with allowing the variance.**

Sheila Gutzmer  
Signature

6-13-10  
Date

Richard P. [Signature]  
Signature

\_\_\_\_\_  
Date

Variance Request

For: Wendlin Platz  
10410 Lilly Dr.  
Bismarck, ND 58503

Name: Bob A. Frohlich

Name: Teresa Frohlich

Address: 10330 Lilly Dr.  
Bismarck, ND 58503

I am aware of Wendlin Platz's variance request and have seen his plan.  
I have NO issues with the plan and see NO problems with allowing the  
variance.

Bob A. Frohlich  
Signature

6-12-10  
Date

Teresa Frohlich  
Signature

6-12-10  
Date



## Community Development Department

### MEMO

DATE: June 24, 2010  
TO: Board of Adjustment Members  
FROM: Gregg Greenquist   
RE: ordinance excerpts on proportional setbacks

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As discussed at your last meeting, attached are the zoning ordinance citations related to proportional building setback distances. As you will see, there are several references to “twenty (20) per cent of the average width of the lot”.

On the upper right corner of each page I labeled the zoning district where the excerpt came from.

The proportional setbacks are found in many zoning districts, including:

RR- Rural Residential  
RR5 – Rural Residential (5-acre minimum lot size)  
R5 – Urban single-family residential  
R10 – Urban two-family residential  
RM – Multi-family residential  
RT – Residential transitional  
HM – Hospital Medical district  
CA – Light Commercial  
MB – Heavy Industrial  
P – Public  
A- Agricultural

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RR

single-family dwelling and accessory buildings may be erected, provided said lot contains no less than forty thousand (40,000) square feet.

4. Front yard. Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line.

5. Side yard. Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot, and in no case less than fifteen (15) feet per yard.

6. Rear yard. Each lot or premises shall have a rear yard depth of not less than fifty (50) feet or twenty (20) per cent of the depth of the lot or premises whichever is the larger, but need not exceed seventy-five (75) feet.

7. Height limits. No single-family dwelling shall exceed forty (40) feet in height nor shall any other principal structure exceed fifty (50) feet in height nor shall any accessory structure exceed twenty-five (25) feet in height. For each foot or fraction thereof, that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum depth of each rear yard required by this section.

8. Automobile parking. Adequate automobile parking shall be provided for each dwelling as set forth by Section 14-03-10 hereof.

9. Minimum road standards. Right-of-way and roadway widths shall conform to the standards as set forth by Part K of Subsection 1 of Section 14-09-05 hereof.

Sufficient temporary construction easements shall be given to allow for proper road construction. All streets to be used for on-street parking shall be forty (40) feet in roadway width if constructed with curb and gutter section or thirty-six (36) feet in roadway width if constructed without curb and gutter section.

10. Accessory Buildings. All allowable accessory buildings to a residence shall be limited to a maximum of fourteen hundred (1,400) square feet for each lot of 85,000 square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between 85,000 square feet and

d. Private riding stables provided that animals shall be used for private use only; that no animal, animal stable, barn or shelter shall be located within one hundred (100) feet of any neighboring residence or structure; that three (3) horses shall be permitted on any premises which contains at least five (5) acres and additional horses shall be allowed at the rate of one (1) horse for every additional three (3) acres of property owned. For the purposes of this ordinance the definition of a horse will be only those horses that are one calendar year of age or older and a miniature horse shall be defined as a horse less than 50 inches high measured at the withers. For the purpose of calculating the number of horses allowed under this section, a miniature horse shall be deemed to be the equivalent of .66 of a horse.

e. Family foster home for adults.

f. Animal husbandry activity or project conducted primarily for educational purposes or school credits, provided such activities are not conducted for commercial purposes and the premises are maintained in a sanitary manner.

The following special uses are permitted as per Section 14-03-08 hereof:

- a. Day care centers.
- b. Church.
- c. Group day-care.

3. Lot area. Each principal building erected, together with its accessory buildings, shall be located on a lot containing a minimum area of 5.0 acres with a minimum lot width of 300 feet and a minimum lot depth of 400 feet.

4. Front yard. Each platted lot shall have a front yard of not less than forty (40) feet in depth as measured from the front property line.

5. Side yard. Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average

width of the lot, and in no case less than fifteen (15) feet per yard.

6. Rear yard. Each lot or premises shall have a rear yard depth of not less than fifty (50) feet.

7. Density. Density shall be one dwelling unit per five acres.

8. Height limits. No single-family dwelling shall exceed forty (40) feet in height nor shall any other principal structure exceed fifty (50) feet in height nor shall any accessory structure exceed twenty-five (25) feet in height. For each foot or fraction thereof, that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum depth of each rear yard required by this section.

9. Automobile parking. Adequate automobile parking shall be provided for each dwelling as set forth by Section 14-03-10 hereof.

10. Minimum road standards. Right-of-way and roadway widths shall conform to the standards as set forth by Part K of Subsection 1 of Section 14-09-05 hereof.

11. Accessory Buildings. All allowable accessory buildings to a residence shall be limited to a maximum of two thousand two hundred (2,200) square feet for each lot of five (5) acres and to one (1) percent of the total area of the lot up to a maximum of five thousand (5,000) square feet for lots larger than five (5) acres. For residential accessory buildings, the maximum wall height shall be limited to Twenty-five (25) feet.

Accessory buildings for the above computations shall include the following buildings: barns, stables, storage buildings and detached garages. Attached garages are not included in the above computations, provided the area occupied by an attached garage does not exceed one and one-half times the area of the footprint of the dwelling portion of the principal structure to which it is attached.

12. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of

4. Lot area. Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family dwelling and accessory buildings may be erected, provided said lot contains no less than five thousand (5,000) square feet.

5. Lot width. Each lot shall have a front property line width of not less than forty (40) feet, and in addition, shall have a width of not less than sixty (60) feet, measured along a line approximately parallel to and forty (40) feet back from the front property line. Provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal and accessory buildings shall not exceed thirty (30) per cent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such space is not furnished within a building.

7. Front yard. Each lot shall have a front yard not less than twenty-five (25) feet in depth.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, except in cases where the ratio between the front lot width and the rear lot width is three (3) or greater. On any lot having an average width of sixty (60) feet or less, each side yard shall not be less than ten (10) percent of the average width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width. On any lot where the ratio between the front lot width and the rear lot width is three (3) or greater, the sum of the widths of the two (2) side yards need not be greater than sixteen (16) feet with neither side yard being less than eight (8) feet. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Side yard measurements are to be taken at

right angles to the building at the closest points to a property line.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

10. Height limits. No single-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height, there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. No accessory building shall exceed twenty-five (25) feet in height.

*(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4610, 05-24-94; Ord. 4703, 06-13-95; Ord. 4756, 05-14-96; Ord. 4991, 06-22-99)*

14-04-04. RMH Mobile Home Residential District. Repealed.  
*(Ord. 4756, 05-24-96)*

14-04-05. RMH Residential District.

1. Description. The RMH residential district is established as a district in which the principal use of land is for single-family mobile and manufactured home dwellings located within manufactured home parks. For the RMH residential district the specific intent of this section is:

a. To encourage the placement of, and the continued use of land for single-family mobile and manufactured home dwellings located within manufactured home parks.

b. To prohibit commercial and industrial uses of the land.

c. To encourage suitable and proper development of manufactured home parks.

2. Permitted Uses. The following use is permitted:

a. Single-family mobile home dwellings or manufactured homes with or without a permanent foundation when located within manufactured home parks.

3. Development Standards.

a single-family or two-family dwelling and accessory buildings may be erected, provided said lot contains not less than five thousand (5,000) square feet.

5. Lot width. Each lot shall have a front property line width of not less than forty (40) feet, and in addition, shall have a width of not less than sixty (60) feet, measured along a line approximately parallel to and forty (40) feet back from the front property line. Provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal and accessory buildings shall not exceed forty (40) per cent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such parking space is not furnished within a building.

7. Front yard. Each lot shall have a front yard of not less than twenty-five (25) feet in depth.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, except in cases where the ratio between the front lot width and the rear lot width is three (3) or greater. On any lot having an average width of sixty (60) feet or less, each side yard shall not be less than ten (10) percent of the average width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width. On any lot where the ratio where the ratio between the front lot width and the rear lot width is three (3) or greater, the sum of the widths of the two (2) side yards need not be greater than sixteen (16) feet with neither side yard being less than eight (8) feet. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Side yard measurements are to be taken at right angles to the building at the closest points to a property line.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

RM

multiple-family dwelling and accessory buildings may be erected subject to zone density restrictions and provided said lot contains at least five thousand (5,000) square feet.

5. Lot width. Each lot shall have a width of not less than sixty (60) feet, measured along the front building line. Provided, however, that for a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total lot area. In computing the ground coverage, off-street parking area complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such spaces are not furnished within a building.

7. Front yard. Each lot shall have a front yard not less than twenty-five (25) feet in depth. Such front yard setbacks shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot and in no case shall a side yard be less than ten (10) feet in width. On any lot having an average width of fifty (50) feet or less, each side yard shall not be less than ten (10) per cent of the width of the lot and in no case less than five (5) feet in width. For lots where the average lot width exceeds two hundred (200) feet, the sum of the two (2) side yards shall be no less than forty (40) feet, but in no case shall a side yard in excess of twenty (20) feet be required except as required herein for increased building height. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Such sideyard setbacks on corner lots shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt. For buildings in excess of two stories in height permitted on or

RM

after October 1, 2007, the required side yard setback shall be increased by 10 feet for each additional story in height over two.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in width. Such rear yard setbacks shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required rear yard setback shall be increased by 10 feet for each additional story in height over two.

10. Height limits. No principal building shall exceed sixty (60) feet in height. No accessory building shall exceed twenty-five (25) feet in height. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required side and rear yard setbacks shall be increased by 10 feet for each additional story in height over two.

*(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 4864, 08-12-97; Ord. 4947, 10-27-98; Ord. 4970, 04-27-99; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5563, 11-28-06; Ord. 5641, 10-09-07; Ord. 5678, 07-22-08)*

14-04-08. RT Residential District. In any RT residential district the following regulations shall apply:

1. General description. The RT residential district is established as a district in which the use of land is high density residential uses and limited business development. For the RT residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction of and continued use of the land for residential purposes and limited business uses on urban lots.

b. To prohibit those commercial and service uses and industrial uses characterized by a high volume of direct daily customer contact and heavy volumes of vehicular traffic.

c. To encourage the discontinuance of uses that would not be permitted as new uses under the provisions of this title.

RT

c. Mortuary/funeral homes.

3. Density. The maximum allowable density is thirty (30) families per net acre.

4. Lot area. Each building containing dwelling units hereafter erected shall be located on a lot having not less than the following:

a. Each multifamily dwelling hereafter erected together with its accessory buildings shall comply with all regulations governing such uses in an RM residential district as provided under Section 14-04-07 except no lot shall be less than seven thousand (7,000) square feet in size.

b. A permitted commercial use shall be located on a lot containing at least seven thousand (7,000) square feet.

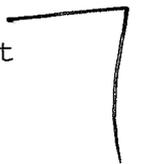
5. Lot width. Each lot shall have a width of not less than sixty (60) feet measured along the front building line.

6. Lot coverage. Residential and commercial uses.

a. Residential use. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total lot area. In computing the floor area ratio and ground coverage, appropriate square footage shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance, if such spaces are not furnished within a building.

b. Commercial use or commercial and residential uses. The ground area occupied by the principal building and accessory buildings shall not exceed seventy-five (75) per cent of the area of the lot. In computing the ground coverage of a building, off-street parking area complying with Section 14-03-10 hereof shall be added to the actual area of the building, if such spaces are not furnished within the building.

7. Front yard. Each lot shall have a front yard not less than fifteen (15) feet in depth.



RT

8. Side yards.

a. Residential use. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot. In no case shall any side yard be less than ten (10) feet. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

b. Non-residential use. On any lot on which the principal building is designed and used for nonresidential use, no side yards shall be required except where such lot is located adjacent to a residential district, in which case that side adjoining such residential district shall comply with the side yard requirements of such residential district. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side yard located adjacent to an R5, R10 or RM zoning district.

9. Rear yards.

a. Residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2).

b. Non-residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal nonresidential building. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2) for any rear yard located adjacent to an R5, R10 or RM zoning district.

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Exception. Upon presentation of a site plan indicating building locations, sizes, design and other land uses, the board of adjustment may adjust lot coverage up to one hundred (100) per cent of the lot.

7. There is no minimum front yard setback, unless the property is immediately adjacent to a residentially-zoned property, in which case the minimum front yard setback shall be fifteen (15) feet.

8. Side yards. A lot on which is erected a residential structure shall have two (2) side yards, one on each side of the principal building. The sum width of the two(2) side yards shall not be less than twenty (20) per cent of the average width of the lot. In no case shall the side yard be less than six (6) feet. On any lot on which the principal building is designed and used for nonresidential use, no side yards shall be required except where such lot is located adjacent to a residential district in which case that side adjoining such residential district shall comply with the side yard requirement of such residential district. Commercial buildings of wood and unprotected metal shall have side yards, complying with the requirements of the city building code, Chapter 4-02 of the Code of Ordinances of the City of Bismarck. All side yards are subject to variance under provisions of subsection (6)(b) of this district regulation.

9. Rear yards. Each lot shall have a rear yard not less than ten (10) feet in depth, except as may be allowed under provisions of subsection 6(b) of this district regulation. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal non-residential building.

10. Height limit. No nonmedical principal building shall exceed fifty (50) feet in height; no accessory building shall exceed twenty-five (25) feet in height. Buildings housing more than fifty (50) per cent occupants whose uses fall within health-medical group uses in excess of fifty (50) feet in height may not be located within one hundred (100) feet of a single- or two-family dwelling in a residential zoning district.

*(Ord. 4351, 1-02-91; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5768, 04-27-10)*

14-04-10. CA Commercial District. In any CA commercial district, the following regulations shall apply:

CA

computing the lot coverage of a commercial building and its accessory buildings, sufficient area shall be added to its ground coverage for each off-street parking space as required by Section 14-03-10 of this ordinance.

b. Residential use. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total area. In computing the lot coverage, sufficient area shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance if such spaces are not furnished within a building.

6. Front yard. Each lot shall have a front yard not less than fifteen (15) feet in depth.

7. Side yard.

a. Residential use. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. In no case shall the side yard be less than ten (10) feet. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

b. Commercial use. On any lot on which the principal building is designed or used for a commercial use, the side yards shall be at least ten (10) feet in width. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side yard located adjacent to an R5, R10 or RM zoning district.

8. Rear yard.

a. Residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required

CA

rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2).

b. Commercial use. Each lot shall have a rear yard not less than ten (10) feet in depth unless adjacent to a public alley. For buildings in excess of two (2) stories in height permitted on or after (date of adoption), the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2) for any rear yard located adjacent to an R5, R10 or RM zoning district.

9. Height limits.

a. Commercial buildings. No building shall exceed forty (40) feet in height. No accessory building shall exceed twenty-five (25) feet in height. For buildings in excess of two (2) stories in height, permitted on or after (date of adoption), the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side or rear yard located adjacent to an R5, R10 or RM zoning district.

b. Residential buildings. Height limits shall follow those in effect in RM residential zones. For buildings in excess of two (2) stories in height, permitted on or after (date of adoption), the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

10. Off-street parking space. Off-street parking space requirements of Section 14-03-10 hereof shall be complied with.

*(Ord. 4564, 11-23-93; Ord. 4702, 06-13-95; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5763, 12-22-09)*

14-04-11. CB Commercial District. Section 14-04-11 is hereby repealed.

*(Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5564, 11-28-06)*

14-04-12. CG Commercial District. In any CG commercial district the following regulations shall apply:

1. General description. The CG commercial district is a heavy commercial area located outside the central business district to provide commerce and service to the City of Bismarck and surrounding regional market. The CG

MB

street parking space as required by Section 14-03-10 of this ordinance.

6. Front yard. Each lot shall have a front yard not less than fifty (50) feet in depth.

7. Side yards. Each lot shall have two (2) side yards, one on each side of any principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. On any lot having an average width of seventy-five (75) feet or less, each side yard shall be not less than ten (10) per cent of the width of the lot, and in no case shall a side yard be less than five (5) feet in width. On a lot having an average width greater than seventy-five (75) feet, neither side yard shall be less than seven and one-half (7.5) feet in width and no side yard need be greater than fifty (50) feet in width. On a lot containing two (2) principal buildings located side by side, there are no minimum requirements for side yards between the two (2) buildings.

8. Rear yard. Each lot shall have a rear yard not less than twenty-five (25) feet in depth.

9. Height limits. No principal building shall exceed seventy-five (75) feet in height. No accessory building shall exceed fifty (50) feet in height.

10. Off-street parking and loading space. Off-street parking and loading requirements of Section 14-03-10 hereof shall be complied with.

*(Ord. No. 4242, 2/28/89; Ord. 4486, 04/27/93)*

14-04-16. "P" Public Use District. In any P public use district the following regulations shall apply.

1. General description. The P public use district is established as a district in which the predominant use of land is for public uses. For the P public use district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the continued use of the land for public recreation, education and other government services.

b. To prohibit residential, commercial and industrial uses of the land, and to prohibit any use of

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the land which would diminish its value in serving the needs of the public.

2. Uses permitted. The following uses are permitted.
  - a. Education group.
  - b. Public recreation group.
  - c. Water treatment plant.
  - d. Buildings and necessary on-site facilities required for conduct of government.
  - e. Commercial recreation group occupying public owned lands.
  - f. Sewerage treatment plant.
  - g. Municipal landfill.
  - h. Parking lots.
  - i. Gift shop occupying public owned lands.
  - j. Food service establishment exclusive of drive-in restaurant, occupying public owned lands.

The following special uses are permitted as per Section 14-03-08 hereof:

- a. Airport.
- b. Cemetery.

3. Lot coverage. The lot coverage of the principal building and all accessory buildings shall not exceed thirty (30) per cent of the lot.

4. Front yard. Each lot shall have a front yard of not less than twenty-five (25) feet in depth.

5. Side yards. Each lot shall have two (2) yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. On any lot having an average width of sixty (60) feet or less, each side yard shall be not less than ten (10) per cent of the width of the lot, and in no case shall a side yard be

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less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet neither side yard shall be less than six (6) feet in width; provided, however, that for a building thirty-five (35) feet or less in height, neither side yard is required to exceed fifteen (15) feet in width.

6. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

7. Height limits. No principal building shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. Any accessory building that exceeds twenty-five (25) feet in height shall be considered a principal building for the purpose of figuring yards and distance from lot boundary lines.

8. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River which is outside of the corporate limits of the City of Bismarck and within the Extraterritorial Area (ETA):

a. Structure Setbacks. All structures shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

b. Design Criteria. Structures should be placed and designed in a manner as to reduce visibility as viewed from the river and adjacent shoreland by vegetation, topography or the color of the structure, assuming summer, leaf-on conditions.

c. Impervious Surface Coverage. The percentage of lot covered by impervious surfaces (structures, paved surfaces, etc.) shall not exceed 25 percent of the lot area.

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- l. Cemetery.
- m. Junkyard.
- n. Day-care center.
- o. Church.
- p. Golf driving range.
- q. Vehicular racetrack.
- r. Hazardous material bulk storage plant.

3. Lot width. Each lot shall have a width of not less than six hundred sixty (660) feet, measured along the front property line.

4. Front yard. Each lot shall have a front yard as follows, as measured from the property line:

<u>Arterial Road</u> <u>(feet)</u>	<u>Collector Road</u> <u>(feet)</u>	<u>Local Road</u> <u>(feet)</u>
175	125	40

All section line roads shall be classified as arterial highways unless specifically designated as a collector highway or local road.

5. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the width of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot, but in no case less than fifteen (15) feet per yard. Provided further, that no building housing livestock or poultry shall be less than fifty (50) feet distant from any residential building on an adjacent lot, nor shall such a building be less than fifty (50) feet from the boundary of any lot in a residential or commercial district. No building on a corner lot shall have a side yard on the side street less than the front yard requirements specified in this section.

6. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth. If such rear yard abuts an arterial or collector road right-of-way, building

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locations shall also conform to the front yard requirements specified in this section.

7. Height limits. No principal building for any permitted use shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height, there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. Any accessory building that exceeds twenty-five (25) feet in height shall be considered a principal building for the purpose of figuring yards and distances from lot boundary lines.

8. Parking requirements. All requirements for off-street parking and loading as shown in Section 14-03-10 of this ordinance shall apply only to nonagricultural uses which involve building(s).

9. Definition of "farm." For the purpose of the administration of this ordinance - A "farm" shall mean a single tract, or contiguous tract, of agricultural land containing a minimum of ten (10) acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty (50) per cent of his annual net income; and the term "farmer" means an individual who normally devotes the major portion of his/her time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty (50) per cent of his/her annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied, as a farmer, the premises.

10. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River: