

*Community Development Department*

**BISMARCK BOARD OF ADJUSTMENT  
MEETING AGENDA  
MAY 3, 2012**

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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 April 5, 2012 meeting.

**REQUESTS**

2. **924 & 928 Baffin Loop** (Kevin Fischer) Request for a variance to reduce the front yard setback from 25-feet to 20-feet for the purpose of constructing a twin home(s).

**OTHER BUSINESS**

3. **Discussion** regarding accessory building language in the Ordinance.
4. **Discussion** regarding Board of Adjustment fees increase.
5. **Discussion** regarding administrative variances.

**ADJOURNMENT**

6. **Adjourn.** The next regular meeting date is scheduled for June 7, 2012.



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
APRIL 5, 2012**

The Bismarck Board of Adjustment met on April 5, 2012 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Board members present were Dean Conrad, Ken Heier, Jennifer Clark, and Jeff Ubl.

Members absent were Michael Marback and Blair Ihmels.

Staff members present were Ray Ziegler (Building Official), Kim Lee (Planning Division Manager), and Kim Riepl (Office Assistant).

Others present were Montie Galt, Bismarck.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Conrad to appoint Ken Heier as Acting Chair in the absence of Michael Marback, Chair and Blair Ihmels, Vice-Chair. With all members voting in favor, the motion was approved.

**MINUTES**

Acting Chair Heier asked for consideration of the August 4, 2011 minutes.

**MOTION:** A motion was made by Ms. Clark and seconded by Mr. Conrad to approve the minutes of the August 4, 2011 meeting as presented. With all members voting in favor, the minutes were approved.

**VARIANCE – MONTIE GALT – 6714 NORTHSTAR ACRES ROAD**

Acting Chair Heier indicated Mr. Galt was requesting a variance to exceed the maximum allowable accessory building area to construct a detached 36' x 60' storage building. He invited Mr. Galt to provide comments.

Mr. Galt explained his property is just less than 3 acres in size, all of which is developed and well-maintained. He stated the amount of equipment necessary to maintain the property requires more than 1,800 square feet of storage space. He wishes to store all the equipment inside for several reasons:

1. To prevent weatherization of the equipment. It is expensive equipment and he wishes to keep it in good condition to avoid having to replace items unnecessarily, and tarping is costly and unsightly.
2. Maintain a neat appearance of the property. Having items sitting outside contributes to the property looking messy and cluttered, which he wishes to avoid.
3. Safety issues. Equipment stored outside invites vandalism and theft.

Mr. Galt explained the amount of square footage requested for the building is storage area only. He will not operate any type of business from the building, now or in the future.

Mr. Conrad asked if any comments had been received from neighbors. Ms. Lee replied two neighboring property owners had provided comment, both in favor of granting the variance.

Mr. Galt added he possessed a letter from a neighboring couple who offered their support of his request, which he gave to staff to file.

Several comments by Board members followed, recognizing the neat appearance of Mr. Galt's property and the pride he shows in maintaining it.

Ms. Clark asked if there were any instances of similar variances in this neighborhood for similar construction. Ms. Lee replied there were none that she was aware of, but went on to provide additional information that may be relevant. She stated the (Burleigh) County Planning Commission had asked Planning staff to put together information to allow increased accessory building sizes in the County. There will be a public hearing on that language next week Wednesday (at the County Planning Commission meeting April 11<sup>th</sup>). Staff will be introducing an accessory building ordinance at the April meeting (of the City Planning and Zoning Commission). As proposed, the maximum accessory building size allowed on a property the size of Mr. Galt's would increase from 1,800 square feet to 2,400 square feet. A public hearing would likely be held at the May meeting, and if there were no issues with it, be forwarded to the (Bismarck) City Commission for consideration in June.

The following findings were provided:

1. The need for a variance may be 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. Ubl to approve the request for the variance to increase the maximum allowable accessory building size from 1,800 square feet to 2,160 square feet for the property at 6714 Northstar Acres Road. The motion was seconded by Mr. Conrad, and discussion followed at the request of Ms. Clark.

*Discussion: Ms. Clark began by asking Mr. Galt if he was the original owner of the property. He replied he has owned it since 1992, but has done all the improvements on the property. Ms. Clark asked if he would be willing to simply wait for a change to the Ordinance and he replied fearing a delay in construction of possibly a year if he did that, as contractors in the area are very busy. Ms. Clark then asked if it may be an alternative to add on to his attached garage, but Mr. Galt replied it is too close to the road.*

*Mr. Heier inquired as to Mr. Galt's plans for the 10' x 12' yard shed on the property, which effectively adds 120 square feet to the overall square footage of accessory building on the property. Mr. Galt replied he would prefer to keep it as a garden shed if possible, but would have no problem tearing it down if necessary.*

*Ms. Clark asked Mr. Galt, if, in the event the Ordinance was revised to allow up to 2,400 square feet, would he revise his plans to construct a bigger building and he replied he would not, as what he has requested is all he needs.*

**CALL FOR VOTE:** Acting Chair Heier called for a vote on the motion made by Mr. Ubl and seconded by Mr. Conrad to approve the request for the variance to increase the maximum allowable accessory building size to allow for the construction of a detached 36' x 60' building at 6714 Northstar Acres Road. With all members present voting in favor, the motion to approve the request for the variance was approved.

#### **VARIANCE – KEVIN FISCHER – 924 & 928 BAFFIN LOOP**

Acting Chair Heier noted neither the applicant nor a representative for the applicant was present at the meeting.

General discussion took place regarding the topography of the area. It was agreed there was a steep slope in the rear yards of the lots, presenting a construction challenge. Ms. Clark asked staff if Mr. Fischer was the developer of the plat and Ms. Lee stated he was not, that he had purchased the lots. Questions of setbacks arose, and Ms. Lee noted setback measurement begins at the edge of the access easement as the property is located on a private drive. She also pointed out the setbacks for the homes on the lots to the west were indicated on the site plan contained in the packet.

Ms. Clark then inquired as to the feasibility of preparing the lots to eliminate the steep slope for construction purposes. Mr. Ziegler replied it may require redesigning the entire home to make it more accommodating to the lot, as well as hauling in a large amount of fill and having to get compaction testing done, and possibly increase the need for spread footings. All these things would substantially increase the costs of construction.

Mr. Conrad questioned whether any comments had been received and Ms. Lee stated no comments had been received.

The following findings were provided:

1. The need for a variance may be 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 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. Ubl to approve the request for the variance to reduce the front yard setback from 25-feet to 22-feet based on the topographical hardship of the site. The motion was seconded by Mr. Conrad for further discussion.

*Discussion: Mr. Conrad expressed his opinion that it was significant that the applicant or a representative of the applicant was not in attendance and he would like the item continued until next month to allow the applicant to attend the meeting.*

*Mr. Ubl commented he felt there to be less and less variance requests that truly involve a (topographical) hardship as is the case, in his opinion, with this request. He further stated he understands the initial reaction to be recommendation of building a smaller home (to suit the lot), however, he believes there to be more that factors into that, as well.*

*Staff indicated surprise at Mr. Fischer's absence as he has been in contact with the Planning office and Mr. Conrad added Mr. Fischer was very busy when he visited the site.*

*Ms. Clark stated she would find it very valuable to hear Mr. Fischer's comments on the request.*

Mr. Ubl withdrew his original motion to approve the request for a variance to reduce the front yard setback from 25-feet to 22-feet. Mr. Conrad then withdrew his second on that motion.

**MOTION:** A motion was made by Mr. Ubl to continue the consideration of the request for the variance to reduce the front yard setback from 25-feet to 20-feet to the next meeting of the Board of Adjustment. The motion was seconded by Ms. Clark and with all members present voting in favor, the item was continued.

Acting Chair Heier indicated the three remaining items on the agenda, noting they were all discussion items. He announced discussion regarding accessory building language in the Ordinance, discussion regarding Board of Adjustment fees increase, and discussion regarding administrative variances would be continued to the next meeting due to the absence of the Chair and Vice Chair at this meeting

#### **OTHER BUSINESS**

Ms. Lee stated there would likely be a draft ordinance regarding accessory building sizes available to view at the next meeting for comments.

**ADJOURNMENT**

There being no further business, Acting Chair Heier called for a motion to adjourn the meeting.

**MOTION:** A motion was made by Mr. Conrad to adjourn the meeting of the Board of Adjustment. The motion was seconded by Mr. Ubl and with all members present voting in favor, the April meeting of the Board of Adjustment was adjourned to meet again on May 3, 2012.

Respectfully Submitted,

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Kim Riepl  
Recording Secretary

APPROVED:

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Michael Marback, Chair

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

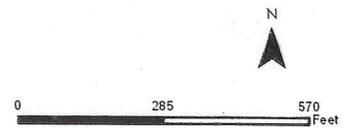
<b>BACKGROUND:</b>	
<b>Title:</b> 924/928 Baffin Loop – reduced front yard setback (25 feet to 20 feet) (Lots 61 and 62, Block 2, Sonnet Heights Subdivision First Replat)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> April 5, 2012
<b>Owner(s):</b> Kevin Fischer	
<b>Reason for Request:</b> Reduce the front yard setback from 25 feet to 20 feet for the construction of a twinhome on a private roadway easement (Baffin Loop).	
<b>Location:</b> Along Baffin Loop north of LaSalle Avenue and west of Ottawa Street.	
<b>Applicable Provision(s) of Zoning Ordinance:</b> 14-04-06 (7). R10 District Regulations/Front Yard. Each lot shall have a front yard of not less than 25 feet in depth.  14-02-03. Definitions/Yard-Front. A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building. When a private roadway easement or access easement is located along a front lot line, the front yard width shall be measured from the interior edge of said easement rather than the actual lot line.	
<b>FINDINGS:</b>	
<ol style="list-style-type: none"><li>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 zoning classification.</li><li>2. The hardship is not caused by the provisions of the Zoning Ordinance.</li><li>3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.</li><li>4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.</li><li>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.</li></ol>	
<b>RECOMMENDATION:</b>	
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**  
**Reduce Front Yard Setback**  
**Lots 61 & 62, Block 2, Sonnet Heights First Replat**



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: March 2, 2012 (klee)

Source: City of Bismarck



RECEIVED

MAR 16 2012

BIF010

**Bismarck**

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

CITY OF BISMARCK / ETA & BURLEIGH COUNTY

RECEIVED DATE: \_\_\_\_\_

CONTACT INFORMATION:

1. Name:

Kevin Fischer

2. Phone Number:

\_\_\_\_\_

3. Property Address:

924 & 928 Bettin LP

4. Location of Property:

City of Bismarck

ETA

Burleigh Country

5. Reason for variance

To decrease the required front yard setback

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.

see attached

7. Your application has been reviewed. It has been:

Approved

Reviewed By:

Ray Guin

Denied

Date:

3-13-2012

8. Reason for denial:

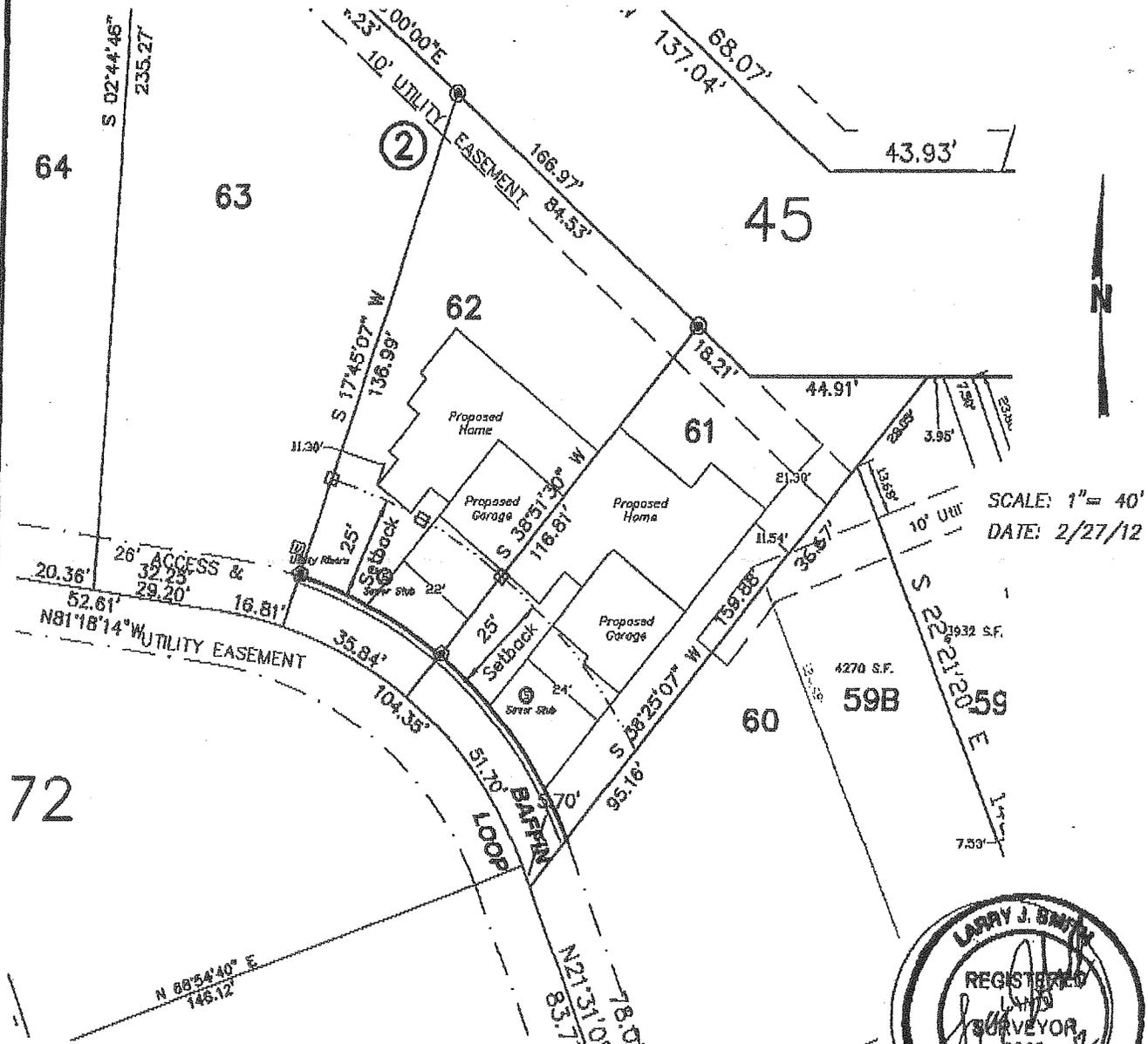
Front yard setback is 25'  
the owner would like it reduced

Please make the corrections and resubmit the application

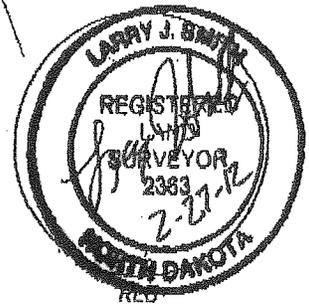
Please note that an application for a permit is deemed to be abandoned 180 days after the date of filing, unless the application has been pursued in good faith or a permit has been issued. Therefore, supply us with the required plans at your earliest convenience.

# LOT SURVEY EXHIBIT

LOT 62 BLOCK 2  
 SUBDIVISION Sonnet Heights First Replat  
 ADDRESS 924 Baffin Loop  
 BUILDER Kevin Fischer



SCALE: 1" = 40'  
 DATE: 2/27/12



- ⊙ FOUND MONUMENT
- ⊙ SET MONUMENT
- ⊙ SET MONUMENT ON PROPERTY LINE
- ⊠ BUILDING SETBACK & BUILDING CORNER STAKE

**NOTES**  
 THE BUILDING SETBACK LINES SHOWN ARE TYPICAL, THERE MAY BE OTHER BUILDING RESTRICTIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING SETBACKS. DIMENSIONS ARE FROM PLAT. BUILDING AS SHOWN WAS FIELD STAKED.

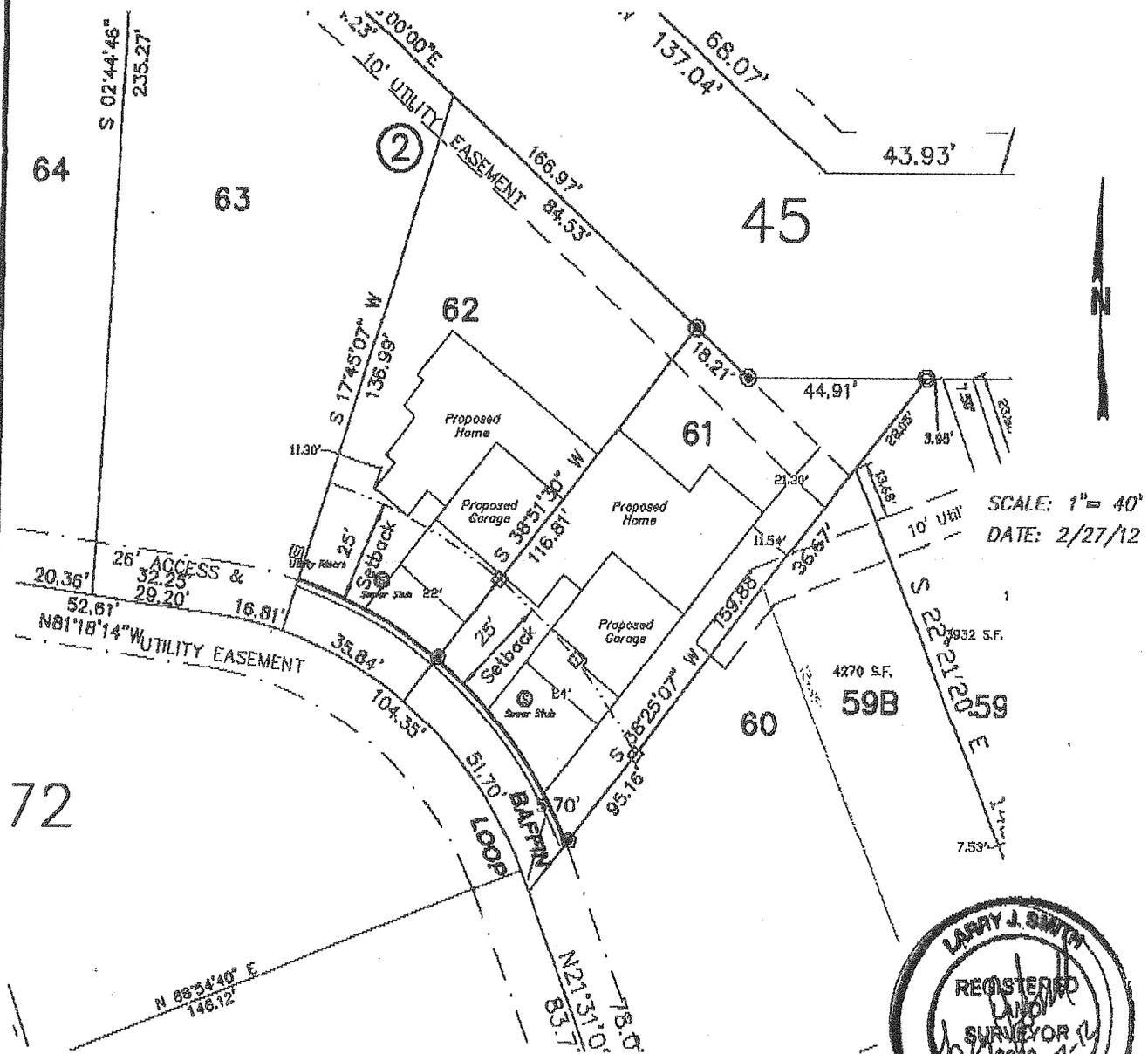
FAXED OR EMAILED TO: \_\_\_\_\_ DATED: 2-27-12  
 BUILDER OR OWNER

**SWENSON, HAGEN & COMPANY P.C.**  
 999 Basle Avenue  
 Bismarck, North Dakota 58104  
 sheng@swensonhagen.com  
 Phone (701) 223-2600  
 Fax (701) 223-2606

Surveying  
 Hydrology  
 Land Planning  
 Civil Engineering  
 Landscape & Site Design  
 Construction Management

# LOT SURVEY EXHIBIT

LOT 61 BLOCK 2  
 SUBDIVISION Sonnet Heights First Replat  
 ADDRESS 928 Baffin Loop  
 BUILDER Kevin Fischer



SCALE: 1" = 40'  
 DATE: 2/27/12



- FOUND MONUMENT
- ⊙ SET MONUMENT
- ⊙ SET MONUMENT ON PROPERTY LINE
- BUILDING SETBACK & BUILDING CORNER STAKE

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**SWENSON, HAGEN & COMPANY P.C.**

909 Basin Avenue  
 Bismarck, North Dakota 58104  
 shcag@swensonhagen.com  
 Phone (701) 223-2600  
 Fax (701) 223-2606

Surveying  
 Hydrology  
 Lead Planning  
 Civil Engineering  
 Landscape & Site Design  
 Construction Management

FIXED OR EMAILED TO:  
 BUILDER OR OWNER

DATED:  
 2-27-12





1025

1021

1017

1013

1000

1009

1001

1012

1008

1004

1000

SOURIS ST

4818

CASTLE DR

913

BAFFIN LP

932

928

924

933

1820

920

921

1830

916

933

912

909

901

908

904

1840

WINDSOR ST

1840

900

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To Whom It may Concern

Variation Committee

I am Requesting a lesser <sup>Front</sup> Set Back,  
Because the ~~lot~~ lots have a water passageway  
in Back, which I can not put a deep ~~foot~~  
floor ~~Plan~~ Plan. I am look at a depth of 40 ft  
or less.

I am Requesting a 20-22 ft Set Back  
on a private Street a 928-924 Buffin Ln.

Kevin Fiedler

**CITY OF BISMARCK**  
**Ordinance No. XXXX**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-03-06 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO INCIDENTAL USES (ACCESSORY USES AND BUILDINGS).

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Incidental Uses is hereby amended and re-enacted to read as follows:

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

1. Accessory Uses and Buildings.

a. General Requirements. Accessory uses and buildings shall comply with the following standards and all other applicable regulations of this chapter:

1. The accessory use or building shall be incidental and customarily associated with the principal use or structure.

2. Except for accessory buildings for one and two-family residential uses constructed in accordance with the provisions of Section 14-03-06(1)(b), the accessory use or building shall be subordinate in area, extent, and purpose to the principal use or building served.

3. The accessory use or building shall contribute to the comfort, convenience and necessity of the occupants of the principal use or building served.

4. The accessory use or building shall be located on the same zoning lot as the principal use or building.

5. The accessory use or building shall not be injurious to the use and enjoyment of surrounding properties.

6. No accessory building shall be located within any recorded public easement or over any known public utility.

b. One and two-family residential accessory uses and buildings.

1. Accessory uses and buildings commonly associated with residential uses include recreational activities, raising of pets, hobbies and parking of occupants' vehicles.

2. Customary domestic pets are allowed in accordance with the provisions of Title 3 of the Bismarck Code of Ordinances, but not including horses, poultry or agricultural livestock except as allowed in Sections 14-04-01, 14-04-02 or 14-04-17 of this ordinance. No more than three (3) dogs or cats, four months of age or older are allowed.

3. Private swimming pools are allowed in accordance with the provisions of Chapter 4-06 of the City Code of Ordinances.

4. All allowable accessory buildings to a residence shall be limited to a maximum of fourteen hundred (1,400) square feet for each lots of ~~85,000~~ 40,000 square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between ~~85,000~~ 40,000 square feet and ~~four (4)~~ acres 64,999 square feet; to a maximum of twenty-

four hundred (2,400) square feet for lots between 65,000 square feet and five and one-half (5.5) acres; and to a maximum of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet for lots larger than ~~four (4)~~ five and one-half (5.5) acres. For residential accessory buildings, the maximum wall height shall be limited to fourteen (14) feet and the maximum building 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.

The allowable accessory buildings for a single-family residence on a lot in an RR - Residential district with 40,000 to 64,999 square feet in area may be increased to a maximum of twenty-four hundred (2,400) square feet as a special use in accordance with the provisions of Section 14-04-17.

The allowable accessory buildings for a single-family residence on a lot in an RR - Residential district with 65,000 square feet to 5.5 acres in area may be increased to a maximum of thirty-two hundred (3,200) square feet as a special use in accordance with the provisions of Section 14-04-17.

The allowable accessory buildings to a non-farm single-family residence in an A - Agricultural zoning district may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Section 14-04-17.

5. Construction of a garage or storage building in any RR, RR5, or A zone is allowed prior to the construction of the principal

dwelling provided the following conditions are met:

a. A petition waiving any objection to the proposed outbuilding is signed by 60% of all owners of land within one-quarter mile of the request.

b. Limitations of the garage or shed constructed pursuant to this section to one structure of no more than one thousand two hundred (1,200) square feet for lots less than 10 acres in size, one thousand eight hundred (1,800) square feet for lots between 10 and 34 acres in size, and two thousand four hundred (2,400) for lots over 34 acres in size.

6. All allowable accessory buildings shall comply with the applicable provisions of Section 14-03-05.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication after the required comment period under Section 40-47-01.1 of the North Dakota Century Code.