



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

January 2, 2020

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

1. Consider the minutes of the December 5, 2019 meeting of the Board of Adjustment.

PUBLIC HEARINGS

2. **Variance from Section 14-04-03(8) of the City Code of Ordinances (R5 – Residential / Side Yard)** – Lot 4, Block 11, Silver Ranch Addition (3912 Silver Boulevard) | VAR2019-026

Owner / Applicant: Premier Homes Inc.

Board Action: approve continue table deny..... 1

3. **Variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front yard)** – Lot 26, Block 10, Silver Ranch Addition (4011 Silver Boulevard) | VAR2019-027

Owner / Applicant: Premier Homes Inc.

Board Action: approve continue table deny..... 7

OTHER BUSINESS

4. **Bylaws.** 2020 Bylaws
5. **City Attorney Combs.**

ADJOURNMENT

6. **Adjournment.** The next regular meeting date is scheduled for February 6, 2020.





STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

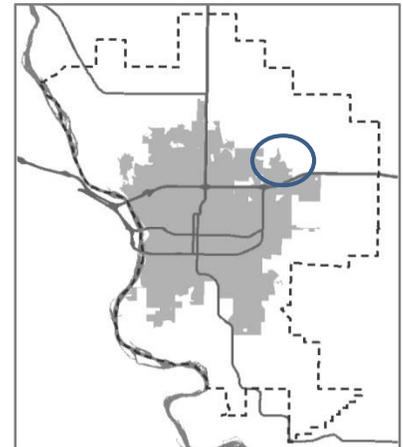
Agenda Item 2
January 2, 2020

Application for: Variance

TRAKiT Project ID: VAR2019-026

Project Summary

| | |
|------------------|--|
| Title: | Lot 4, Block 11, Silver Ranch Addition (3912 Silver Boulevard) |
| Status: | Board of Adjustment |
| Owner(s): | Premier Homes Inc. |
| Project Contact: | Brian Zuroff, PE, Mountain Plains LLC |
| Location: | In northeast Bismarck east of 52 nd Street NE south of 43 rd Avenue NE, between Titanium Drive and Gold Drive, along the west side of Silver Boulevard |
| Request: | Variance from Section 14-04-03(8) of the City Code of Ordinances (R5 – Residential / Side Yard) |



Staff Analysis

Premier Homes Inc. is requesting a variance to reduce the required side yard setback, located along the southern portion of the property, from six feet to four feet six inches for the construction of a proposed single-family dwelling.

A building permit to construct a single-family dwelling was obtained October 30, 2019. A lot survey indicating the placement of the proposed single-family dwelling conforming to required setbacks was submitted and reviewed prior to approval of the permit.

A footing inspection occurred on November 21, 2019 and a foundation inspection occurred on December 3, 2019. Both passed inspection; however, the surveyor determined that the foundation of the proposed single-family dwelling was projecting approximately one foot six inches into the required side yard setback located along the southern portion of the property.

Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular

physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”

Section 14-04-03(8) of the City Code of Ordinances (R5 – Residential / Side Yard) states, “each lot shall have two (2) side yards, one on each side of the principal building. Each side yard shall be no less than six (6) feet in width.” According to the lot survey submitted with the application the proposed single-family would be located four feet six inches from the side property line along the south side of the property.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within R5 – Residential zoning district.
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.

Attachments

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

Staff Recommendation

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

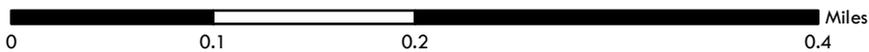
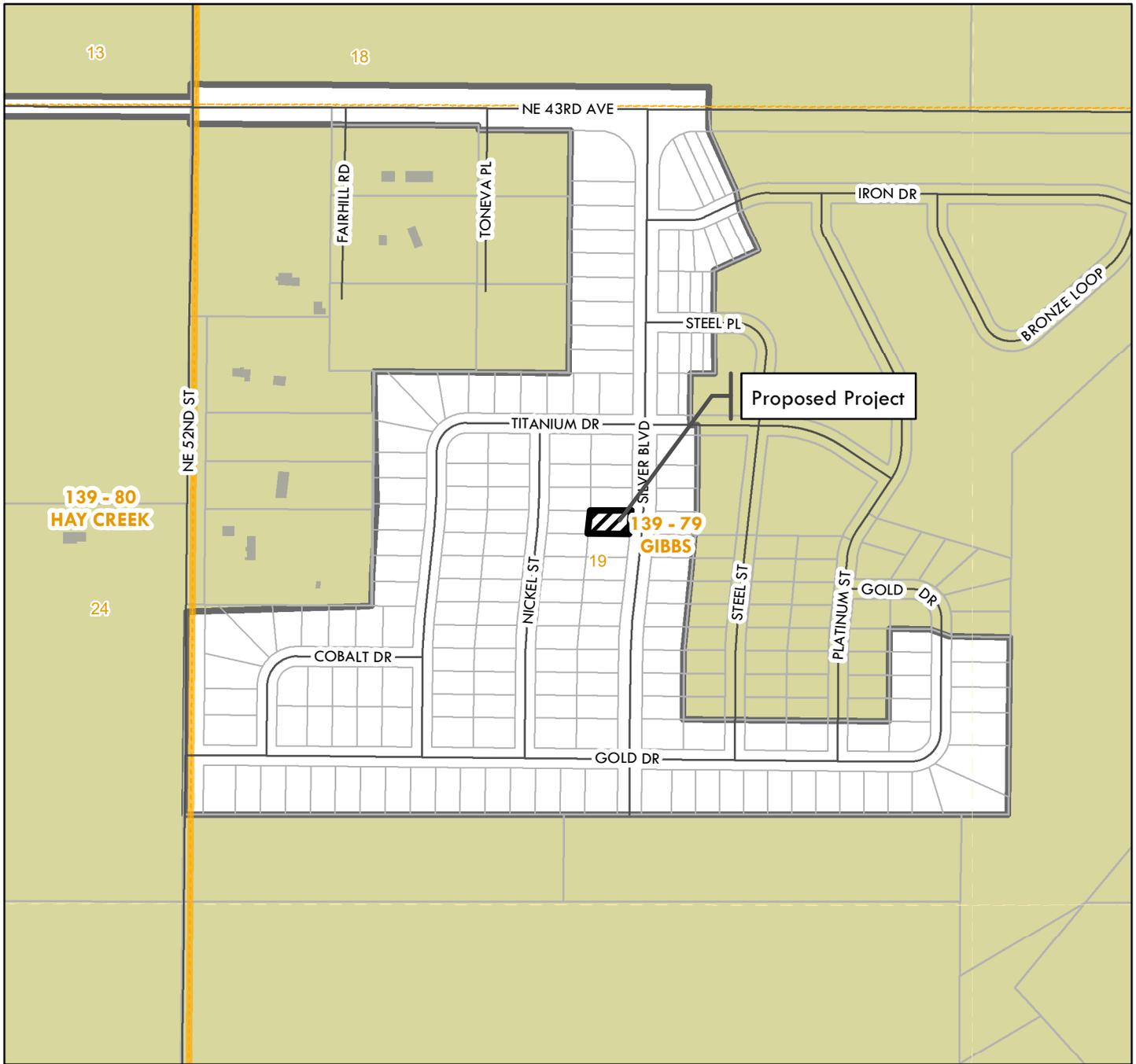
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

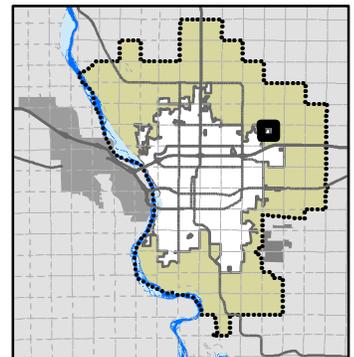
Lot 4, Block 11, Silver Ranch First Addition

VAR2019-026



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
 Community Development Department
 Planning Division
 December 10, 2019 (HLB)

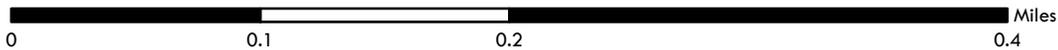
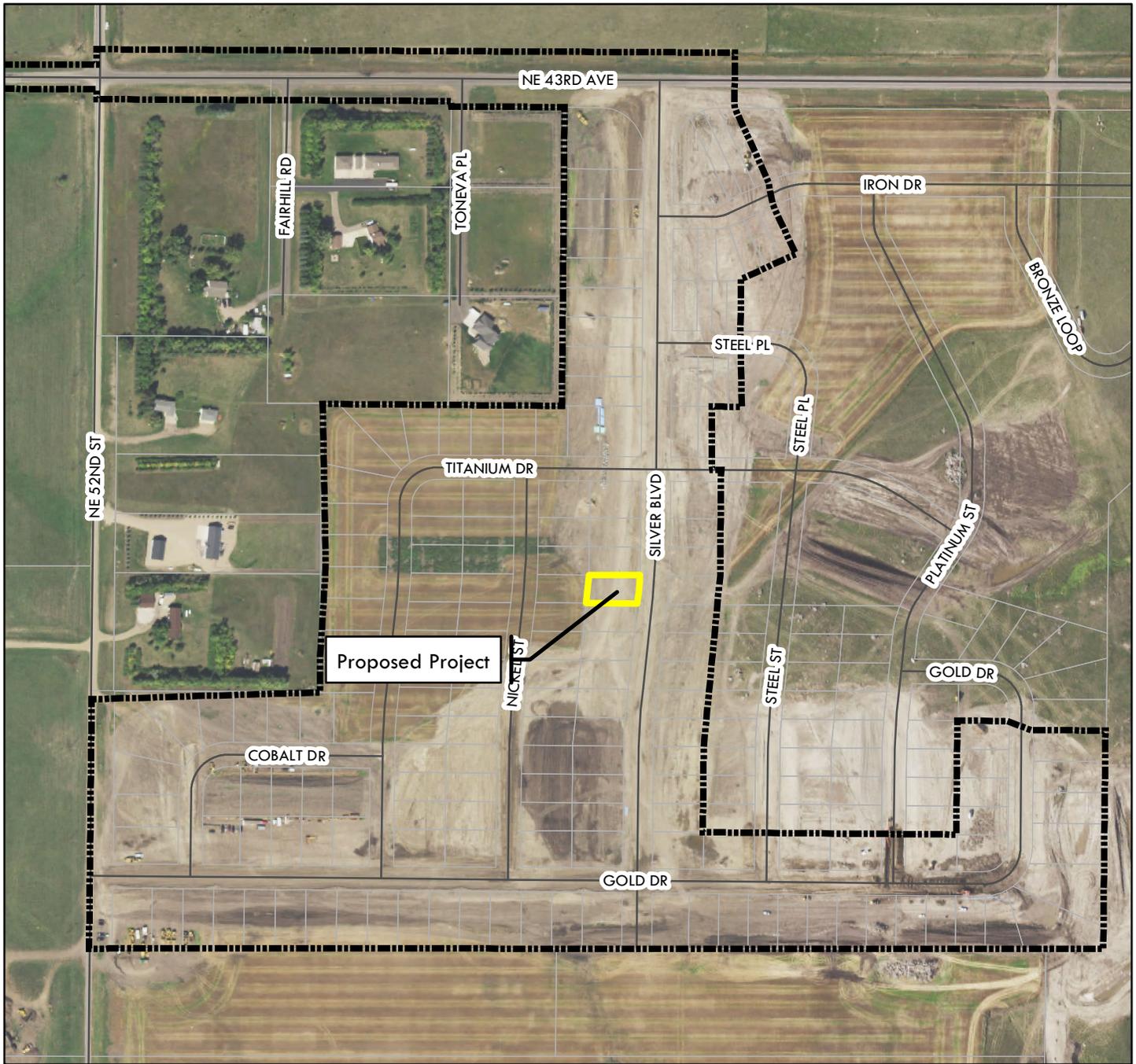
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Aerial Map

VAR2019-026

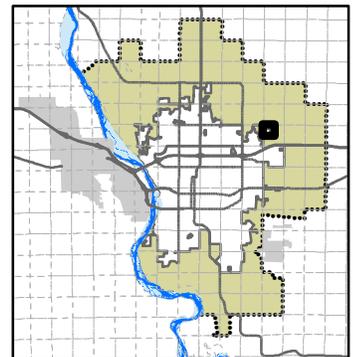
Lot 4, Block 11, Silver Ranch Addition
(3912 Silver Boulevard)



 City Limits
  Bismarck ETA Jurisdiction

Aerial Imagery from 2018

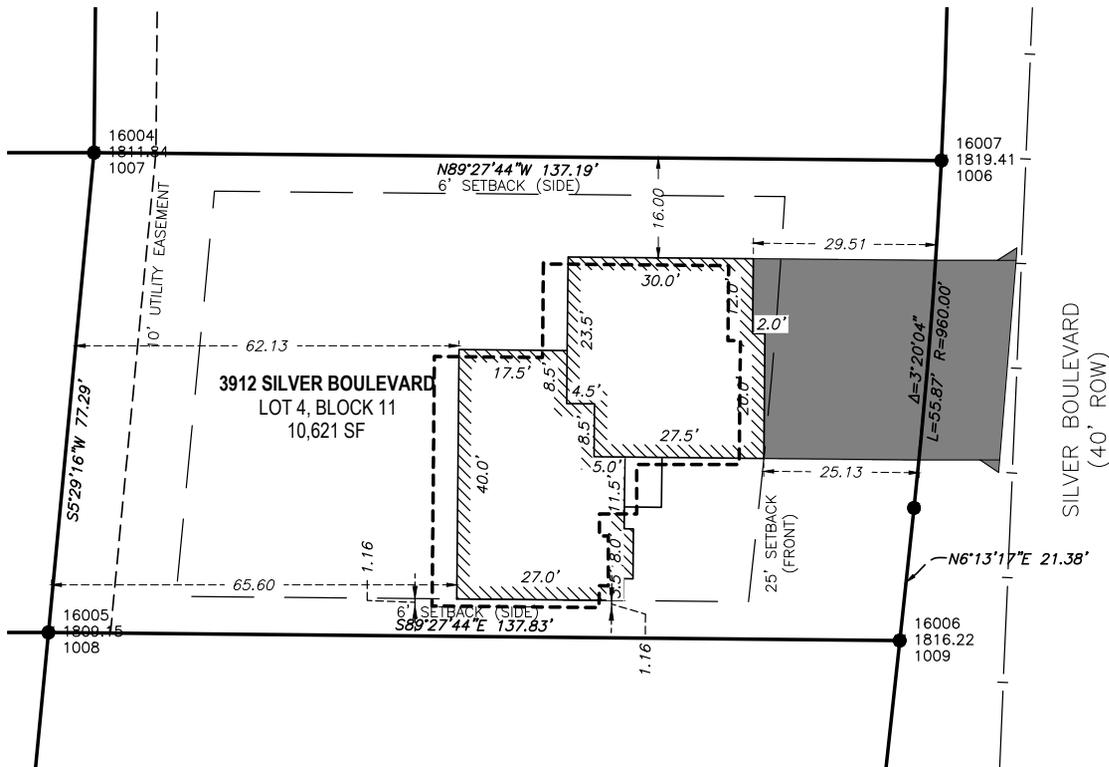
City of Bismarck
 Community Development Department
 Planning Division
 December 11, 2019



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LOT EXHIBIT

LOT 4, BLOCK 11
 SILVER RANCH FIRST ADDITION
 BISMARCK, NORTH DAKOTA
 SECTION 19, TOWNSHIP 139 N RANGE 79 W OF THE 5TH
 PRINCIPAL MERIDIAN, BURLEIGH COUNTY



LEGEND

- PLATTED MONUMENT
- ⊙ SANITARY MANHOLE
- ▨ STORM INLET
- PROPERTY LINE
- - - RIGHT-OF-WAY LINE
- - - ADJACENT PROPERTY LINE
- - - EASEMENT
- SANITARY SEWER
- STORM SEWER
- |— WATERMAIN
- ▬ PROPOSED DRIVEWAY
- ▨ PROPOSED BUILDING

0 10 20
 SCALE: 1 INCH = 20 FEET

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- NOTES**
- 1 BEARINGS AND DIMENSIONS FOR LOTS SHOWN ARE BASED ON THE APPROVED PLAT "SILVER RANCH FIRST ADDITION" APPROVED BY ROBERT M. ILLG, LS-8444 OF SEH, INC. ON 2 JANUARY 2018, BURLEIGH COUNTY DOCUMENT NO. 871063.
 - 2 SETBACK DIMENSIONS SHOWN FOR CITY OF BISMARCK R-5 ZONING.
 - 3 UNDERGROUND UTILITIES SHOWN ARE PROVIDED BY CITY OF BISMARCK GIS DATABASE.

| | | | | | |
|---------------|--|---|----------|--|------------|
| PROJECT TITLE | | LOT EXHIBIT LOT 4, BLOCK 11 SILVER RANCH FIRST ADDITION | |  1300 TACOMA AVE. BISMARCK, ND 58504 PHONE:(701) 557-3348 WWW.MTNPLAINS.COM | |
| CLIENT NAME: |  1300 TACOMA AVE BISMARCK, ND 58504 PHONE:(701) 557-3348 WWW.MTNPLAINS.COM | DRWN BY: | CHRD BY: | APPD BY: | DATE: |
| | | NNN | BJZ | BJZ | 12/10/2019 |
| | | PROJECT NO: | 003464 | SCALE: | 1" = 20' |
| | | | | SHEET NO: | 1 OF 1 |



City of Bismarck
 Community Development Department
 Planning Division
 Phone: 701-355-1840 * FAX: 701-222-6450 * TDD: 711
 PO Box 5503 * Bismarck, ND 58506-5503
planning@bismarcknd.gov

Last Revised: 01/2017

**WRITTEN STATEMENT
 OF HARDSHIP
 (VARIANCE REQUEST)**

NOTE: WRITTEN STATEMENTS OF HARDSHIP MUST ACCOMPANY EVERY VARIANCE REQUEST APPLICATION

| PROPERTY INFORMATION | |
|---|---|
| Property Address or Legal Description: (Lot, Block, Addition/Subdivision) | Silver Ranch |
| Location of Property: | <input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA |
| Type of Variance Requested: | Setback Variance |
| Applicable Zoning Ordinance: (Chapter/Section) | R-5 Res. District - 14-04-03.7 "Front Yard" and 14-04-03.8 "Side Yards" |
| 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.) | |
| In early November 2019, Premier Homes applied for, and received building permits for 7 houses in Silver Ranch 1st Addition. These houses were staked by Mountain Plains via the coordinate system on recorded plat on file with the Burleigh County Recorder and City of Bismarck. This coordinate system did not match the on-site monuments. The foundations for Lot 26, Block 10 and Lot 4, Block 11 were installed and approved by the city's Building Inspections department before the discrepancy between the recorded coordinate system and field monumentation was realized and corrected. The discrepancy has been addressed and corrected for future structures. The discrepancy creates an approximate 4-foot encroachment to the 25-foot front yard setback for Lot 4, Block 10, and a 1-foot side-yard encroachment to the 6-foot side yard setback for Lot 26, Block 10. | |
| Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship. | |
| In discussion with Premier Homes, City Inspection, Engineering, and Planning staff, the previously approved foundations would need to be removed in their entirety. Given the distance to surrounding structures and properties are readily under development, such demolition work could cause disturbance to the surrounding properties. | |
| Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property. | |
| The variance allows the structures to be complete per the current placement of the foundation - it allows no additional setback than what is required for the existing foundation to be utilized. | |



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

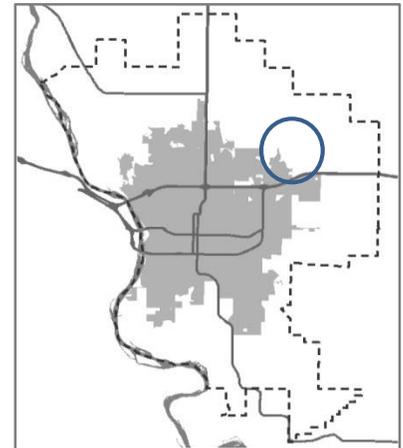
Agenda Item 3
January 2, 2020

Application for: Variance

TRAKiT Project ID: VAR2019-027

Project Summary

| | |
|-------------------------|--|
| Title: | Lot 26, Block 10, Silver Ranch Addition (4011 Silver Boulevard Avenue) |
| Status: | Board of Adjustment |
| Owner(s): | Premier Homes Inc. |
| Project Contact: | Brian Zuroff, PE, Mountain Plains LLC |
| Location: | In northeast Bismarck east of 52 nd Street NE and south of 43 rd Avenue NE, between Titanium Drive and Gold Drive, along the east side of Silver Boulevard |
| Request: | Variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front Yard) |



Staff Analysis

Premier Homes Inc. is requesting a variance to reduce the required front yard setback located along the western portion of the property, adjacent to Silver Boulevard, from 25 feet to 21 feet for the construction of a proposed single-family dwelling.

A building permit to construct a single-family dwelling was obtained October 30, 2019. A lot survey indicating the placement of the proposed single-family dwelling conforming to required setbacks was submitted and reviewed prior to approval of the Permit.

A footing inspection occurred on November 14, 2019 and a foundation inspection occurred on November 15, 2019. Both passed inspection; however, while performing an inspection on an adjacent property, the surveyor determined that the foundation of the proposed single-family dwelling was projecting approximately 4 feet into the required front yard setback located along the western portion of the property, adjacent to Silver Boulevard.

The zoning ordinance makes provisions for the allowance of contextual setbacks for certain properties that may allow the reduction of front yard setbacks. However, this particular property is located in an area

of Bismarck that was recently platted and is not subject to this allowance

Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”

Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front Yard) states, “Each lot shall have a front yard for a principal or accessory structures not less than twenty-five (25) feet in depth” According to the site plan submitted with the application, the proposed single-family dwelling would be 21 feet from the front property line located along the western portion of the property, adjacent to Silver Boulevard.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally

applicable to other properties in this area and within R5 – Residential zoning district.

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

Staff Recommendation

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

Attachments

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3. Site plan
4. Written Statement of Hardship

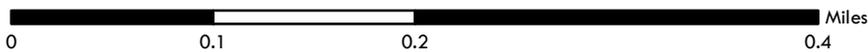
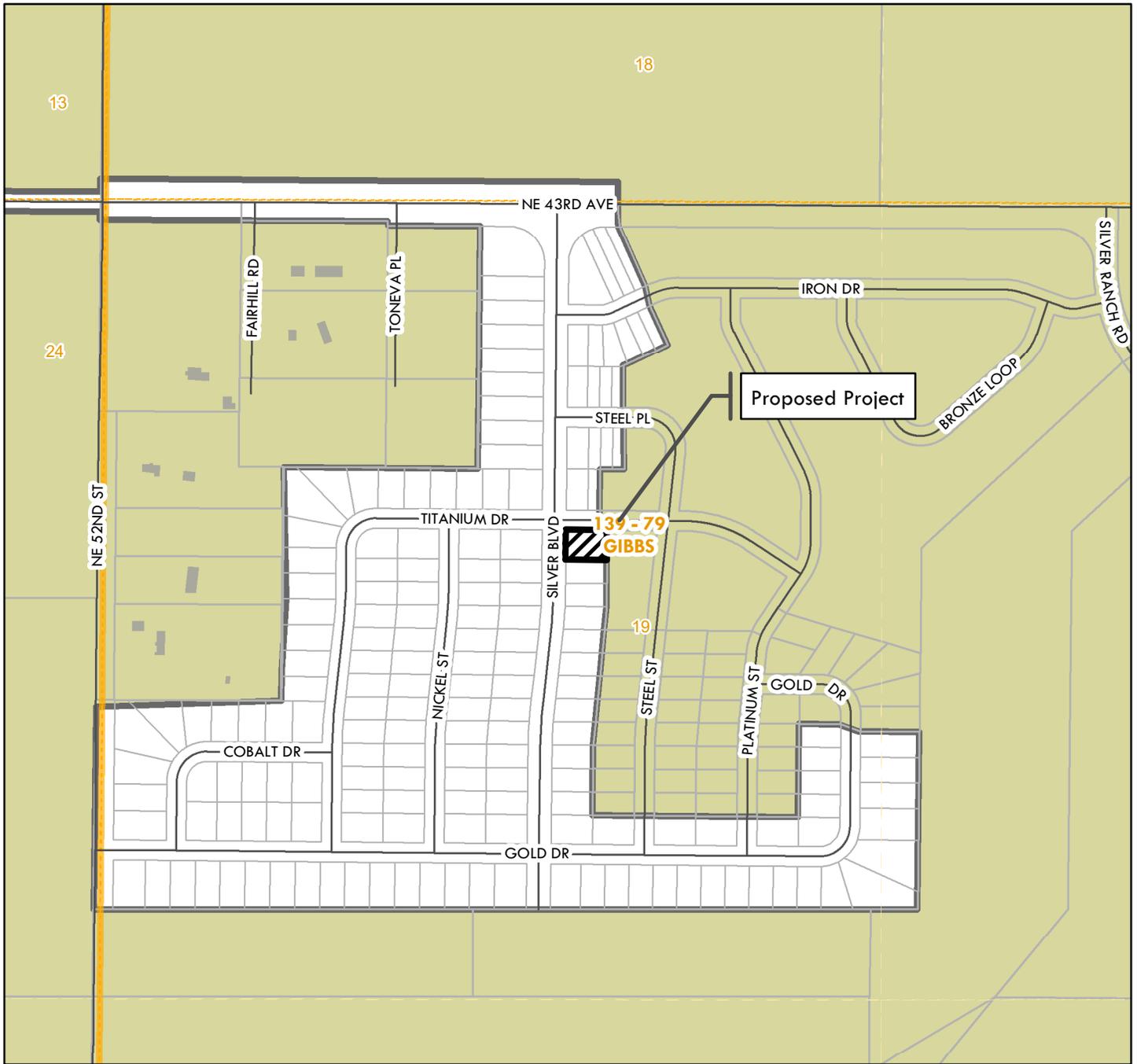
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Location Map

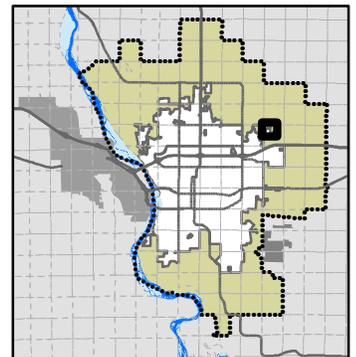
Lot 26, Block 10, Silver Ranch First Addition

VAR2019-027



-  City Limits
-  Bismarck ETA Jurisdiction
-  County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
 Community Development Department
 Planning Division
 December 10, 2019 (HLB)

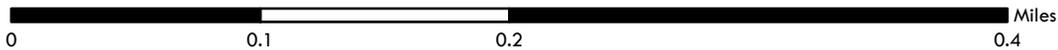
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Aerial Map

VAR2019-027

Lot 26, Block 10, Silver Ranch Addition
(4011 Silver Boulevard)

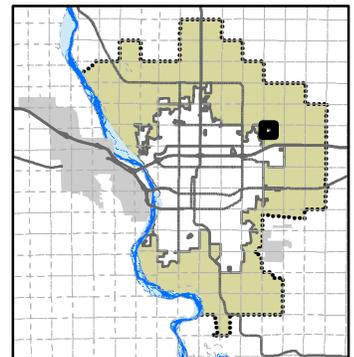


City Limits Bismarck ETA Jurisdiction

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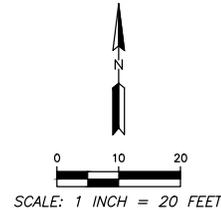
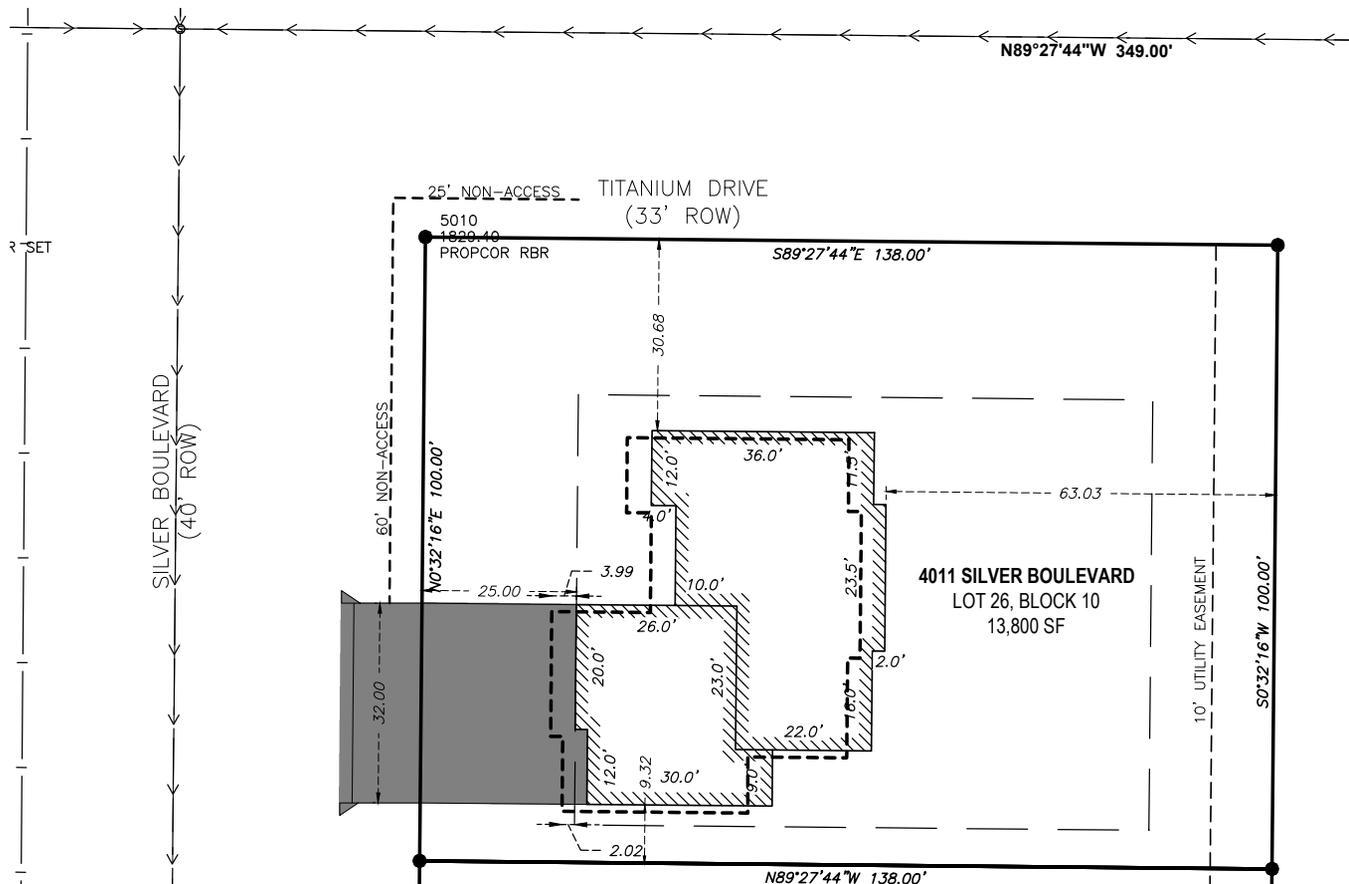
City of Bismarck
Community Development Department
Planning Division
December 11, 2019

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LOT EXHIBIT

LOT 26, BLOCK 10
 SILVER RANCH FIRST ADDITION
 BISMARCK, NORTH DAKOTA
 SECTION 19, TOWNSHIP 139 N RANGE 79 W OF THE 5TH
 PRINCIPAL MERIDIAN, BURLEIGH COUNTY



LEGEND

- PLATTED MONUMENT
- ⊙ SANITARY MANHOLE
- ▨ STORM INLET
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| CLIENT NAME: |  1300 TACOMA AVE BISMARCK, ND 58504 PHONE:(701) 557-3348 WWW.MTNPLAINS.COM | DRAWN BY: | NNN BJJ | CHKD BY: | BJJ |
| PROJECT NO: | 003464 | APPD BY: | BJJ | DATE: | 12/10/2019 |
| | | | SCALE: | 1" = 20' | |
| | | | SHEET NO: | 1 OF 1 | |



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Last Revised: 01/2017

**WRITTEN STATEMENT
 OF HARDSHIP
 (VARIANCE REQUEST)**

NOTE: WRITTEN STATEMENTS OF HARDSHIP MUST ACCOMPANY EVERY VARIANCE REQUEST APPLICATION

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|---|---|
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| Location of Property: | <input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA |
| Type of Variance Requested: | Setback Variance |
| Applicable Zoning Ordinance: (Chapter/Section) | R-5 Res. District - 14-04-03.7 "Front Yard" and 14-04-03.8 "Side Yards" |
| 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.) | |
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| Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property. | |
| The variance allows the structures to be complete per the current placement of the foundation - it allows no additional setback than what is required for the existing foundation to be utilized. | |

Bylaws of the City of Bismarck Board of Adjustment

Article I. Authorization

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

Article II. Purpose

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

Article III. Membership and Organization

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

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

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

The vice-chairperson shall conduct all business delegated by the chairperson, in the absence of the chairperson.

Article IV. Conduct of Members and Ethics

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

B. Conflict of Interest. A member of the Board of Adjustment who has a direct and substantial personal or financial interest in a matter before the Board shall disclose that fact to the Board and may not participate or vote on that particular matter without the consent of a majority of the other members of the Board present.

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

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

Article V. Powers and Duties of the Board

A. Powers and Duties of the Board. The Board of Adjustment has all of the powers and duties confirmed by Chapter 14-06 of Title 14 of the City Code of Ordinances and Chapter 40-47 of the NDCC. These powers and duties include:

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

Article VI. Appeals to the Board

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

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

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

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

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

Article VII. Findings of Fact

A. Findings of Fact. In accordance with Chapter 14-06 of Title 14, an adjustment or variance in the strict application of any provisions of Title 14 may not be granted by the Board of Adjustment unless the Board finds the following:

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

Article VIII. Lapse

A. Lapse. A variance granted must be put into use within twenty-four (24) months of the granting of the variance or the variance lapses and the landowner or their agent must re-apply for a variance if the landowner seeks to put the variance into use.

Article IX. Meetings

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

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

C. Participation. A Board member may join the meeting by telephone. A member participating by telephone is included in the determination of a quorum and eligible to participate in discussion and voting on all agenda items.

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

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

Article X. Staff Responsibilities

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

Article XI. Amendment of Bylaws

A. Amendments. These Bylaws may be amended at any regular or special meeting of the Board of Adjustment, if the proposed amendment has been introduced in writing at least seventeen (17) days before the meeting of the Board. Amendment of the Bylaws requires the affirmative vote of at least four (4) members of the Board.

Adopted this _____ date day of Month Year

Board of Adjustment



Chairman

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
December 5, 2019**

The Bismarck Board of Adjustment met on December 5, 2019, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided.

Members present were Jennifer Clark, Ken Hoff, Curtis Janssen, Michael Marback and Rick Wohl.

Member Chris Seifert was absent.

Staff members present were Ben Ehreth – Community Development Director, Kim Lee – Planning Manager, Brady Blaskowski – Building Official, Janelle Combs – City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chair Marback called for approval of the minutes of the November 7, 2019 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Janssen to approve the minutes of the November 7, 2019 meeting, as presented. With Board Members Clark, Hoff, Janssen, Marback and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-03-06(1)(B)(4) OF THE CITY CODE OF ORDINANCES (INCIDENTAL USES/ACCESSORY USES AND BUILDINGS) - LOT 2, BLOCK 5, IMPERIAL VALLEY SUBDIVISION (3651 WEST PRINCETON AVENUE)

Chair Marback stated the applicants, Jason and Nita Sherwin, are requesting variances to increase the area of accessory buildings from 1,200 square feet to 1,600 square feet and to increase the side wall height of an accessory building from 12 feet to 15 feet.

Ms. Wollmuth said the property is located outside corporate limits within the City's Extraterritorial Area (ETA) and is zoned R10 – Residential. She added that the R10 – Residential zoning district limits the total area of accessory buildings to 1,200 square feet.

Ms. Wollmuth gave an overview of the requests, 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 this is in the same area as a previous variance granted for a similar request and asked when the requirements of the zoning ordinance changed.

Ms. Wollmuth said it was limited in 2015 for R5-Residential and R10-Residential zoning districts located in the ETA from 40% lot coverage to 1200 square feet with a 12-foot side wall.

Chair Marback opened the public hearing.

Mr. Sherwin said this is the third home they have owned with an extended garage and bought it with the intention of building more. He said there was not a road at the time their house was built and they have had to add some security measures to their property due to the increased traffic. He said some of the snow and ice prevention materials have deteriorated the edge of his driveway as well.

Ms. Sherwin said they do not have any street lights and would also like more storage for privacy reasons. She said they were not informed that there are rental properties or a group home nearby when they purchased their home and the mature trees on their property will help to obscure the proposed accessory building from view.

Mr. Janssen said when he searched for their address he was given a business name at the same location.

Mr. Sherwin explained that he does have a lawn care business as a seasonal side job and some of the equipment used for that is also for his own personal use.

Ms. Sherwin added that they have some recreational vehicles and are considering purchasing a camper which they would want to keep inside, in addition to a hydro seeder that needs to be moved.

Mr. Hoff asked who maintains the streets and installs lights in Imperial Valley Subdivision. Mr. Sherwin said Burleigh County handles all of those things and their road was only recently paid because they are in a newer part of the subdivision and said that cost was assessed to various property owners.

Ms. Wollmuth added that because the subdivision is in the ETA it would like any other county property and be maintained and developed by Burleigh County.

Mr. Wohl asked how close to the side property line the driveway for the accessory building would be. Mr. Sherwin said it would be approximately 13-15 feet away from the neighboring property line yet.

Ms. Clark asked if the heightened side wall is absolutely necessary. Mr. Sherwin said they would like to be allowed the higher side wall in the event they purchase a camper, but it is not a critical need.

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

Ms. Clark asked what the side wall height approved was on the previous variance request similar to this one. Ms. Wollmuth said that request was for a 15-foot side wall and 2400 square feet. She said the Board of Adjustment approved a 15-foot side wall and 1200 square feet which was appealed to the Board of City Commissioners which then approved a 15-foot side wall and 1600 square feet.

Mr. Janssen said he is concerned about the overall size and feels they are setting the trend that 15-16-foot sidewalls are acceptable.

Ms. Clark said she agrees, that it would be very tall, but she also has a hard time distinguishing any differences between this property and the neighboring property that received the previous variances.

Mr. Janssen said there is a lot more separation and style as it relates to the property that received the previous variances of the same kind.

Chair Marback said he is not opposed to the higher side wall or the size given the trees on the property and feels it will be better hidden than most.

MOTION: A motion was made by Ms. Clark to approve the variances from Section 14-03-06(1)(b)(4) of the City Code of Ordinances (Incidental Uses/Accessory Uses and Buildings) to increase the area of accessory buildings from 1,200 square feet to 1,600 square feet and to increase the side wall height of an

accessory building from 12 feet to 15 feet on Lot 2, Block 5, Imperial Valley Subdivision (3651), based on it being consistent with neighboring uses. The motion was seconded by Mr. Wohl and with Board Members Clark, Marback and Wohl voting in favor of the motion and Board Members Hoff and Janssen opposing the motion, the variance was not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07, therefore the variance is denied.

VARIANCE FROM SECTION 14-03-10(3) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – AUDITOR’S LOT H AND TRACTS 2 AND 3 OF LOT 1, BLOCK 1, NORTHERN PLAINS COMMERCE CENTRE ADDITION (2103 TRADE STREET)

Chair Marback stated the applicants, LaFarge Holcim (lessee) and the City of Bismarck (owner), are requesting a variance to eliminate the requirement to pave the access (driveway) from Trade Street to three required off-street parking spaces located adjacent to a 5,000 square foot building which is proposed to be constructed.

Ms. Wollmuth said the applicant originally indicated that the proposed building would require 15 off-street parking spaces, however, upon further review by staff, the proposed use of the site is not specifically referenced in the zoning ordinance; therefore, the Zoning Administrator is permitted to assign required off-street parking spaces based on similar uses listed in the ordinance. She said based on the information outlining how the site would function, which was submitted with the application, it has been determined that three off-street parking spaces, one for each employee, would be required.

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 MA-Industrial 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.

Chair Marback asked if there is railroad right-of-way on either side since the property is adjacent to a railroad spur. Ms. Wollmuth said the applicant would likely be able to define that information best.

Ms. Clark asked what is to the south of this property and if there is the potential for development there in the future. Ms. Wollmuth said to the south is all airport property, so further development is not likely.

Brad Krogstad, KLJ, said the road leading to the property is approximately 1500 feet long, adding that the parking area on-site would be paved. He said there is one-foot deep crushed concrete on the road now and that works well for the moving of heavy equipment, such as their concrete trucks. He said the concern with the paving requirement is that a lot of maintenance would end up being involved and it would not be cost effective. He said it would cost approximately \$250,000 for asphalt and even more for concrete. He said the proposed building is proposed to be 5,000 square feet with a small office area. He added that to his knowledge there is not any railroad right-of-way easements here.

Mr. Hoff asked if the intent is to keep their current location.

Dale Demaray, LaFarge Holcim, said they would keep their location on Front Street for now since the oil boom tripled their business. He said they eventually would like to move completely but for now they own their location on Front Street and would lease the additional location from Burlington Northern Santa Fe.

Ms. Clark asked then if the variance is to not pave the road, but the parking area would still be paved.

Mr. Krogstad said that is correct, that the parking lot would be paved in addition to the sidewalk around the building and a concrete pad in the shop area.

Chair Marback opened the public hearing.

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

Mr. Hoff asked if this has all been covered with fire and the other emergency services. Ms. Wollmuth said those items would be covered during the site plan review process, to include reviews from those services and correcting any issues as needed at that time.

Ms. Clark asked if there has been requests similar to this one in the past. Ms. Wollmuth recalled one similar request for a property on Channel Drive which was denied.

MOTION: A motion was made by Mr. Wohl to approve the variance from Section 14-03-10(3) of the City Code of Ordinances (Off-street Parking and Loading) to eliminate the requirement to pave the access to the required parking in

conjunction with the construction of a 5,000 square-foot building to be constructed on Auditor's Lot H and Tracts 2 and 3, Block 1, Northern Plains Commerce Centre Addition (2103 Trade Street), based on the infeasibility of paving a 1500-foot long roadway and this being an extreme case. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Janssen, Marback and Wohl voting in favor of the motion, the motion was approved and the variance was approved.

PARKING DETERMINATION – AUDITOR'S LOTS A & B OF THE SE¼ OF THE NE¼ OF SECTION 33, T139N-R80W/CITY LANDS AND LOTS 1 & 2, BLOCK 1, REPLAT OF CALKINS ADDITION (1100 EAST BOULEVARD AVENUE)

Chair Marback stated City staff is requesting the Board of Adjustment make a parking determination in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading/Uses Not Specifically Listed).

Ms. Wollmuth said Lutheran Social Services is currently managing the property located at 1100 East Boulevard Avenue, previously owned and operated by Ruther Meiers Hospitality House. She said Lutheran Social Services has a purchase agreement for the property and is proposing to renovate the facility to enhance underutilized areas within the existing buildings and upgrade existing parking lots. Ms. Wollmuth further explained that the facility will include a total of 108 residential apartments with a mix of efficiency, 1, 2, and 3-bedroom units for low- and moderate-income tenants and office space for 28-30 Lutheran Social Service staff. Ms. Wollmuth added that renovations would also allow for the exiting commercial kitchen, located in the main building, to be rented by local food entrepreneurs and educational partners within the community. She said the existing parking areas on site would be upgraded and hard surfaced with curb and gutter, and will include landscaping and lighting and Lutheran Social Services has indicated that 158 off-street parking spaces would be sufficient for the facility, based on their experience with similar housing projects, and as outlined in project narrative attached to the staff report.

Ms. Wollmuth went on to say the Bismarck City Commission approved a zoning change to the Conditional CA – Commercial zoning district, which allows for the mix of residential and office uses, and utilization of the commercial kitchen in September 2019. Ms. Wollmuth closed by explaining that Community Development staff have reviewed the project narrative and tentative site plan in conjunction with the proposed renovations for Boulevard Avenue Apartments, and concurs with Lutheran Social Services that 158 off-street parking spaces would be sufficient for the facility. She said as the zoning ordinance does not specifically identify parking requirements for low- and moderate-income residential units, staff is requesting the Board of Adjustment make a parking determination for the facility.

Mr. Janssen asked if there are any other properties with a similar situation. Ms. Wollmuth said the parking ordinance amendments are being drafted so for now they take into

consideration various planning and traffic engineering materials which indicate parking for these types of uses to be much less.

Mr. Wohl said there is not currently a requirement for low-income housing, but there is one for multi-family uses. Ms. Wollmuth said that is correct.

Mr. Wohl further stated this property does not fit the typical multi-family use. Ms. Wollmuth said that is also correct.

Chair Marback said at this time they just need to determine if the existing 158 on-site parking spaces are sufficient for this use.

MOTION: A motion was made by Ms. Clark to determine that the 158 existing off-street parking spaces are adequate to support the use of the facility for Auditor's Lots A & B of the SE¼ of the NE¼ of Section 33, T139N-R80W/City Lands and Lots 1 & 2, Block 1, Replat of Calkins Addition (1100 East Boulevard Avenue). The motion was seconded by Mr. Janssen and with Board Members Clark, Hoff, Janssen, Marback and Wohl voting in favor of the motion, the motion was unanimously approved and the parking determination was granted.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:36 p.m. to meet again on January 2, 2020.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair