



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

March 5, 2020

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

- 1. Consider the minutes of the February 6, 2020 meeting of the Board of Adjustment.

PUBLIC HEARINGS

- 2. Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – The S½ of Lot 4 and Lots 5-8, Block 15, Northern Pacific Addition | VAR2020-003

Owner / Applicant: Boutrous Group, LLC | 506 Properties, LLC | Lander Group

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

- 3. Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – Part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings) | VAR2020-004

Owner / Applicant: Kobe Development, LLC | SHG, LLC

Board Action: [ ]approve [ ]continue [ ]table [ ]deny..... 9

- 4. Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – Lot 1, Block 1, Meadowlark Commercial 5th Replat (4503 Skyline Crossings) | VAR2020-005

Owner / Applicant: Charras Properties, LLC

Board Action: [ ]approve [ ]continue [ ]table [ ]deny..... 17

OTHER BUSINESS



221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • www.bismarcknd.gov

Building Inspections Division • Phone: 701-355-1465 • Fax: 701-258-2073 Planning Division • Phone: 701-355-1840 • Fax: 701-222-6450

5. **Other Business.** Update regarding Zoning Ordinance Text Amendment to Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)

## **ADJOURNMENT**

6. **Adjournment.** The next regular meeting date is scheduled for April 2, 2020.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

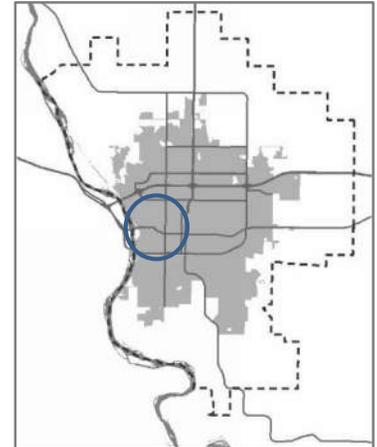
Agenda Item 2  
March 5, 2020

## Application for: Variance

TRAKiT Project ID: VAR2020-003

### Project Summary

Title:	The S½ of Lot 4 and Lots 5-8, Block 15, Northern Pacific Addition
Status:	Board of Adjustment
Owner(s):	Boutrous Group, LLC   506 Properties, LLC   Lander Group
Project Contact:	Brett Donat, EAPC Architects Engineers
Location:	In central Bismarck, between North 2 <sup>nd</sup> Street and North 3 <sup>rd</sup> Street, along the north side of East Avenue A
Request:	Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)



### Staff Analysis

Boutrous Group, LLC, 506 Properties, LLC, and the Lander Group are requesting a variance to reduce the required off street parking spaces for a 4- story multi-family building from 96 spaces to 54 spaces.

The proposed multi-family building will include 68 apartments with a mix of efficiency, one and two bedroom units. The proposed multi-family building is located within the DF – Downtown Fringe zoning district and is located one block north of the existing downtown parking district. The downtown parking district is an area that does not require off-street parking and loading.

If approved as proposed, the project would require the demolition of two existing structures in the southeast corner of the property and the combination of seven parcels into one parcel.

The Renaissance Zone Authority acting as the Downtown Design Review Committee approved the design of the project at their meeting on January 9, 2020. The proposed variance to reduce parking was not included in this approval; however, the Authority did place a condition on the approval design of the project based on approval of any necessary variances.

The Planning Division of the Community Development Department has initiated a zoning ordinance text amendment to revise the existing off-street parking and loading requirements outlined in the City’s Zoning Ordinance. As part of the proposed revisions, the existing downtown parking district would be expanded to include all properties zoned HM – Health Medical, DC – Downtown Core, and DF – Downtown Fringe. As this property is located within the DF – Downtown Fringe zoning district, it would be located in an area that off-street parking would not be required if the revised off-street parking and loading requirements are approved as proposed.

The Planning and Zoning Commission, during their meeting of February 26, 2020, called for a public hearing on the proposed revisions which has been scheduled for March 25, 2020. If the Planning and Zoning Commission recommends approval of the proposed revised ordinance, it would be forwarded for final action by the City Commission. Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment in May 2020.

### Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which

(continued)

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 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading requires one parking space be provided for each efficiency unit, one and one-half spaces for each one-bedroom unit, two spaces for each two-bedroom unit, and two and one-half spaces for each three-bedroom unit or larger. According to the information submitted with the application, the proposed multi-family dwelling would contain 37 efficiency units, seven one-bedroom units and 24 two-bedroom units, and would require 96 off-street parking spaces. The applicant is proposing to provide 54 off-street parking spaces.

**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 DF – Downtown Fringe 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, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

**Attachments**

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

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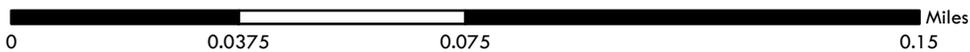
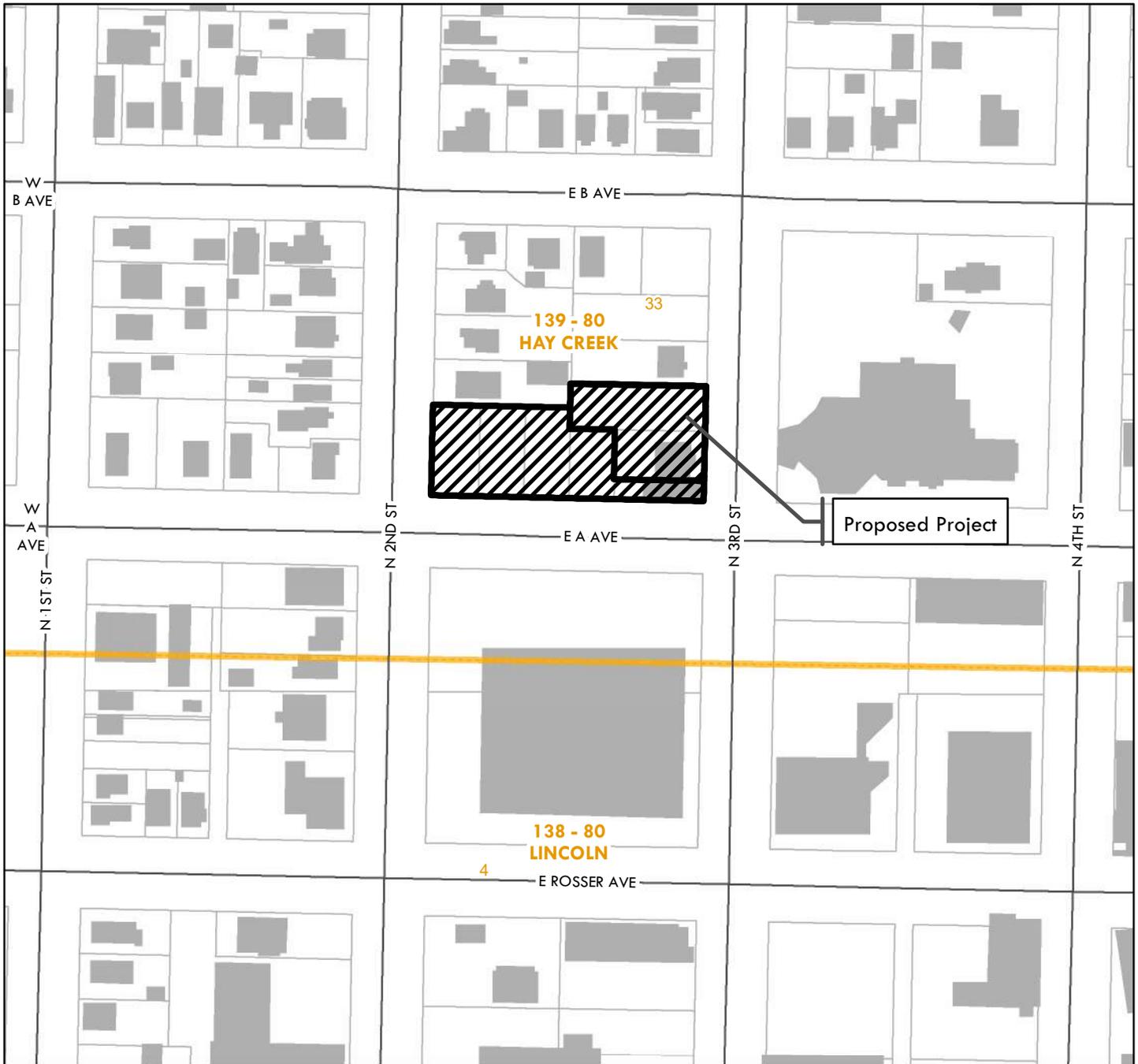
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)



# Location Map

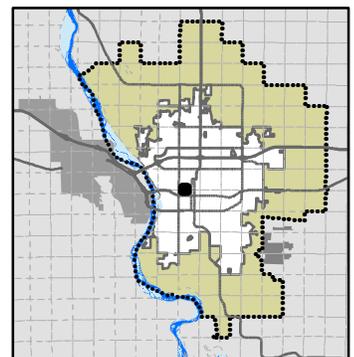
Lots 7-8, Block 15, Northern Pacific Addition

VAR2020-003



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck  
 Community Development Department  
 Planning Division  
 February 20, 2020 (HLB)

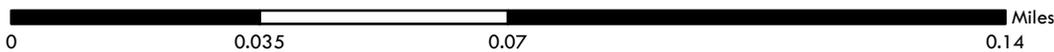
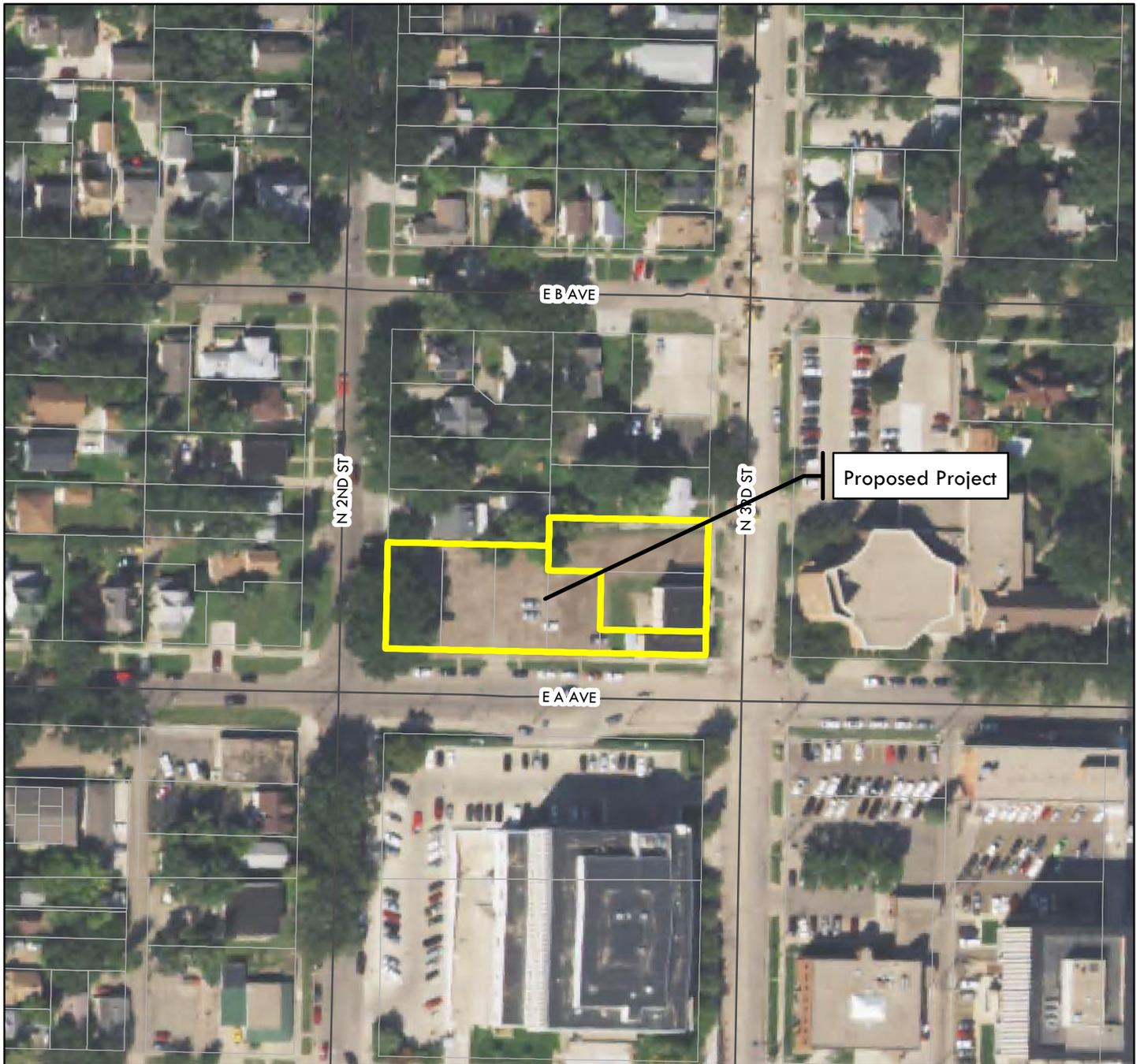
*This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.*



# Aerial Map

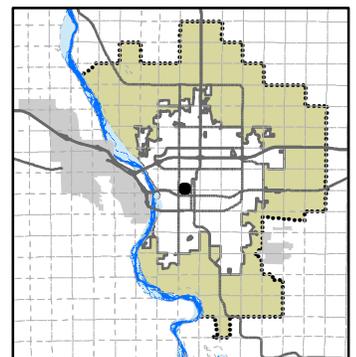
VAR2020-003

The South 1/2 of Lot 4 and Lots 5-8, Block 15, Northern Pacific Addition  
(202, 204, 210, 212 and 220 East Avenue A and 500-506 North 3rd Street)



 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from 2018



City of Bismarck  
Community Development Department  
Planning Division  
February 24, 2020

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PERSPECTIVE

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# EAST HOUSING AVENUE A

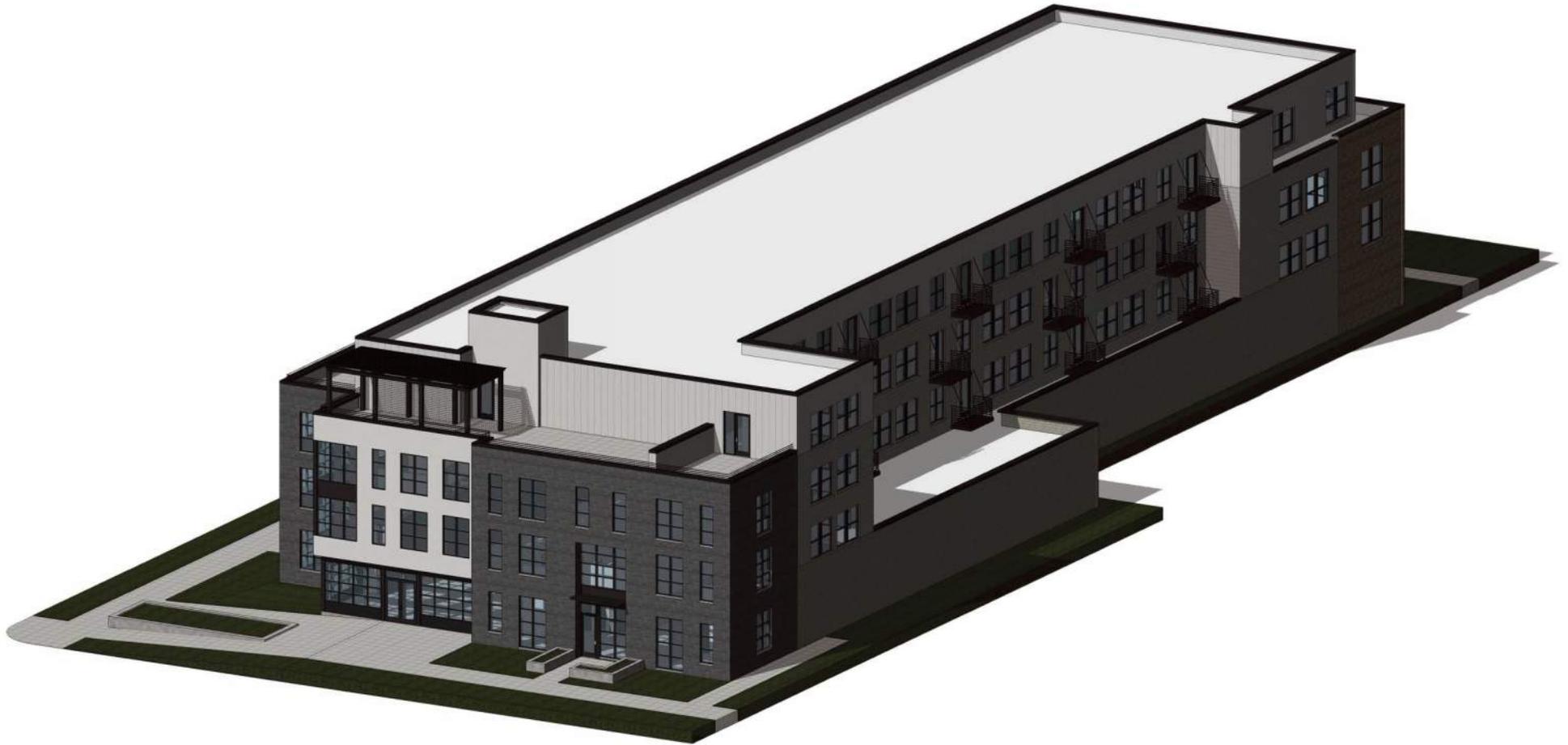
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BISMARCK, ND

DEC 2019

**LANDERGROUP**  
urban development

 **EAPC**  
ARCHITECTS ENGINEERS



PERSPECTIVE

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# EAST HOUSING AVENUE A

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BISMARCK, ND

DEC 2019

**LANDERGROUP**  
urban development

 **EAPC**  
ARCHITECTS ENGINEERS





City of Bismarck  
 Community Development Department  
 Planning Division  
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 PO Box 5503 \* Bismarck, ND 58506-5503  
[planning@bismarcknd.gov](mailto:planning@bismarcknd.gov)

Last Revised: 01/2017

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

REB 1 0 2020

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

**PROPERTY INFORMATION**

Property Address or Legal Description: <small>(Lot, Block, Addition/Subdivision)</small>	Lot 7-8, Block 15, Northern Pacific Addition
Location of Property:	<input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA
Type of Variance Requested:	Off-Street Parking
Applicable Zoning Ordinance: <small>(Chapter/Section)</small>	14-03-10 Off-Street Parking and Loading

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

The off-street parking requirement for this project can not meet the current City of Bismarck Zoning Ordinance. The size of the site does not physically allow enough space to fit the required 96 parking spaces related to the number of residential units in the building. The zoning for this parcel and its adjacency to parcels also zoned DF implies the desire to maximize the size of a building. The parking requirements for DF assume everyone will need to park on the site, and no other options for off-site parking is available or desired. This hinders the size of the building that can be built in DF zones.

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

The site would have to be designed to see how much parking it can handle and then a building could be sized around that restriction. This site is along 3rd street, having access from a large parking lot onto 3rd street is not ideal. The site is long and narrow and doesn't allow for anything other than a two way, perpendicular design with a dead end at 3rd street.

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

The building's residential feel along East Ave A is designed to allow residents to park on the street and walk up to their front doors. The Front Entrance in the SE corner allows residents to access the building from the pedestrian pathways along the city streets. The demographic of tenants for this building are those wanting to live near downtown. The desire to be close enough to downtown to walk or ride a bike is essential to how they live. The building fits the neighborhood feel as the priority, and the allowable space for parking secondary. The parking provided takes full advantage of the space remaining on the site



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

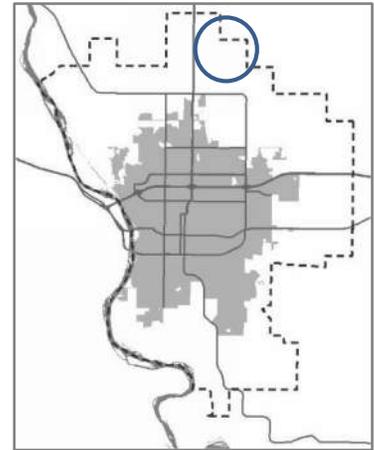
Agenda Item 3  
March 5, 2020

## Application for: Variance

TRAKiT Project ID: VAR2020-004

### 4Project Summary

<b>Title:</b>	Part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings)
<b>Status:</b>	Board of Adjustment
<b>Owner(s):</b>	Kobe Development, LLC   SHG, LLC
<b>Project Contact:</b>	Harvey Schneider, PE, Toman Engineering
<b>Location:</b>	In north Bismarck, between 43 <sup>rd</sup> Avenue NE and Skyline Boulevard east of US Highway 83, along the west side of Skyline Crossing
<b>Request:</b>	Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)



### Staff Analysis

Kobe Development, LLC and SHG, LLC are requesting a variance to reduce the required number of off-street parking spaces from 68 spaces to 43 spaces in order to construct a fast-food restaurant.

The proposed fast-food restaurant would be a single-story 4,060 square foot building with a drive-through. The zoning ordinance requires one space for each 60 square feet of the building and one space for each employee on the largest shift.

The Planning Division of the Community Development Department has initiated a zoning ordinance text amendment to revise the existing off-street parking and loading requirements. As part of the proposed revisions, the parking requirements for a fast-food restaurant would be revised to require one space for each 60 square feet of dining area and one space for employee on the largest shift. The applicant has indicated that there will be five employees on the largest shift and that the dining area of the restaurant would be 1,260 square feet. If approved as proposed the required parking spaces for the fast-food restaurant would be 27 spaces.

The Planning and Zoning Commission, during their meeting of February 26, 2020, called for a public

hearing on the proposed revisions which has been scheduled for March 25, 2020. If the Planning and Zoning Commission recommends approval of the proposed revised ordinance, it would be forwarded for final action by the City Commission. Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment in May 2020.

The proposed drive-through meets the stacking spaces outlined in the zoning ordinance and the applicant has applied for a special use permit to allow the installation of the drive-through. A public hearing for the special use permit is tentatively scheduled for the March 25, 2020 meeting of the Planning and Zoning Commission.

### 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 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) requires one space for each 60 square feet of gross floor area of the building and one space for each employee on the largest shift, which would require 68 spaces. According to the information submitted with the application, 43 off-street parking spaces are proposed to be provided.

**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 CG - Commercial 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, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

**Attachments**

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

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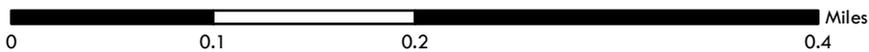
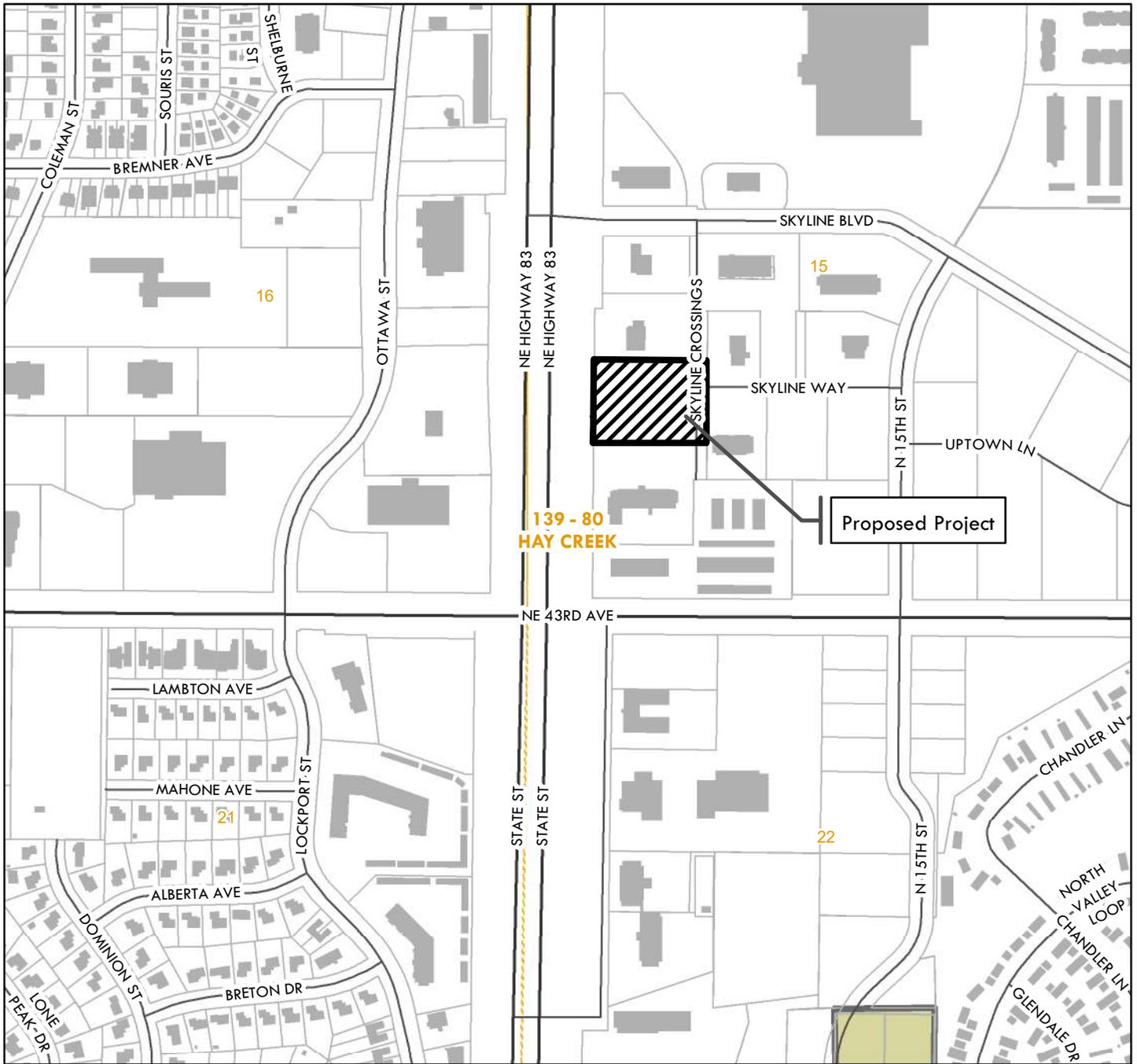
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)



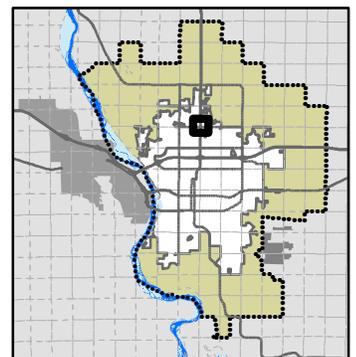
# Location Map

Part of Lot 3, Block 1, Meadowlark Commercial 4th Addition

VAR2020-004



Section, township, and range indicated in orange



City of Bismarck  
 Community Development Department  
 Planning Division  
 February 11, 2020 (HLB)

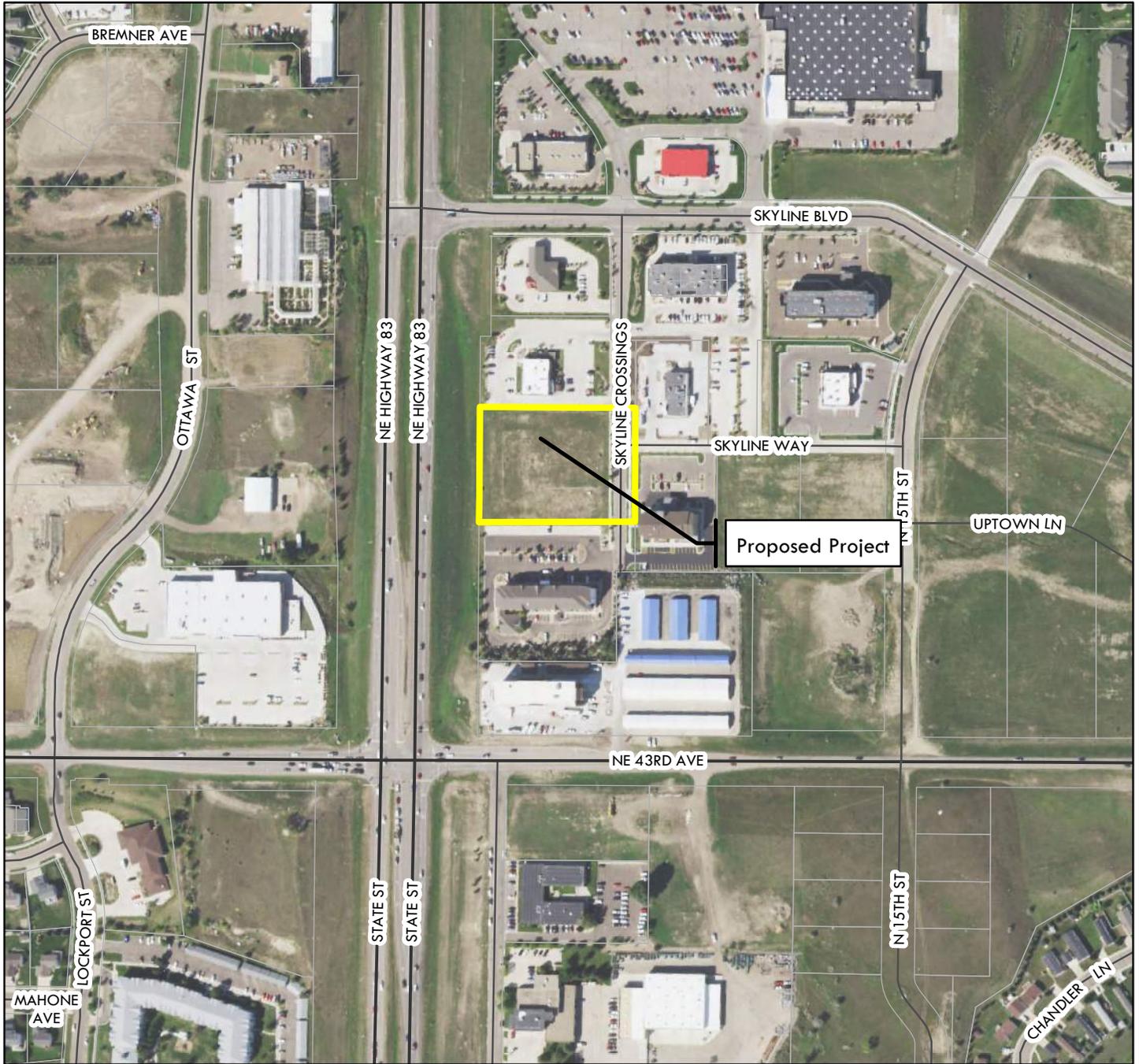
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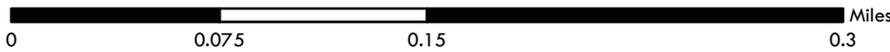
# Aerial Map

VAR2020-004

Part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings)



Proposed Project

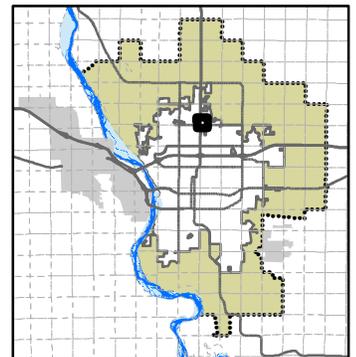


City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018

City of Bismarck  
Community Development Department  
Planning Division  
February 24, 2020

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**PROPOSED CULVER'S RESTAURANT  
BISMARCK, ND. PLAN MIRRORED METRO M SHOWN**

LOT AREA APPROX. 53,254 SQ. FT. OPTION 3



JGD 08/12/19

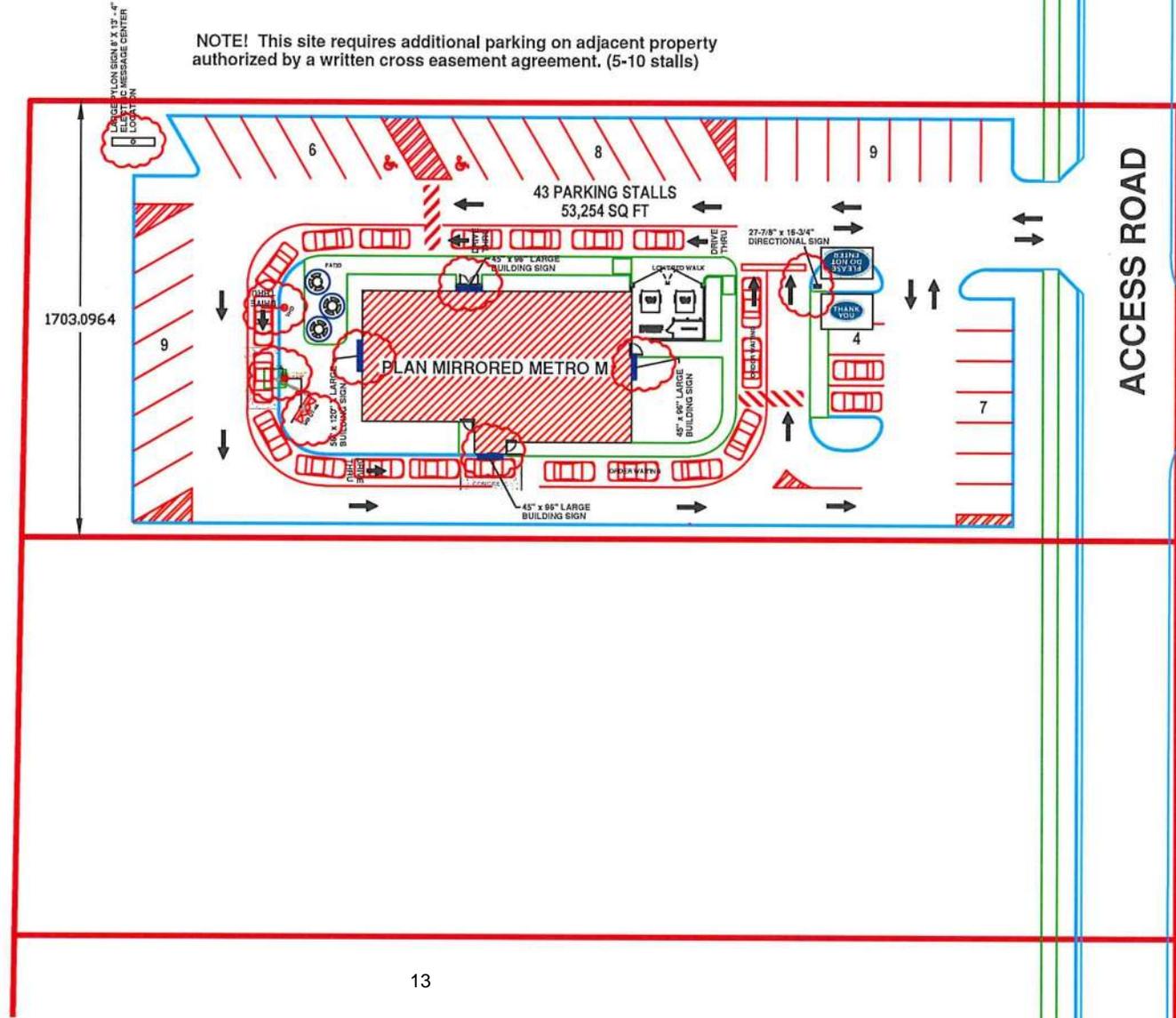
SAMMI WU

Any adjustments to this layout must be submitted to Culver Franchising System, LLC. for review and approval.

*This plan was developed without benefit of boundary or topographic survey. Adjustments to this layout may be necessary when boundary and topographic information becomes available. Note that a copy of final layout must be submitted to Culver Franchising System, LLC. for review and approval.*

STATE ST

NOTE! This site requires additional parking on adjacent property authorized by a written cross easement agreement. (5-10 stalls)





City of Bismarck  
 Community Development Department  
 Planning Division  
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 PO Box 5503 \* Bismarck, ND 58506-5503  
[planning@bismarcknd.gov](mailto:planning@bismarcknd.gov)

Last Revised: 01/2017

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

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

<b>PROPERTY INFORMATION</b>	
Property Address or Legal Description: <small>(Lot, Block, Addition/Subdivision)</small>	Lot A of Lot 3, Block 1, Meadowlark Commercial 4th Addition
Location of Property:	<input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA
Type of Variance Requested:	Reduction of off-street parking requirements
Applicable Zoning Ordinance: <small>(Chapter/Section)</small>	14-03-10
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.)	
Zoning Ordinance Section 14-03-10(3) requires off-street parking of 1 space per 60 due to the proposed construction of Culver's, a fast food restaurant. With the proposed building being 4,060 sf, the required number of spaces is 68. Due to the size of the lot and the landscape buffer abutting State Street, the design yields a maximum of 43 spaces (5 additional spaces have been secured from the adjacent property owner for employee parking).	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
Based on a letter provided by Culver's Real Estate Manager, Peter Siepe (attached), the 43 spaces shown on their site design is more than adequate.	
60% of their business on average is drive-thru which requires fewer parking spaces than other fast-food restaurants. The proposed design does allow for up to 12 stacked vehicles as required by the ordinance. Their seating area is approximately 1,600 sf which would require only 27 spaces, and the 5 spaces reserved for their employees, adding to a total of 32 spaces. The proposed design includes more spaces than they need. The required 1/60 parking ratio per the ordinance would preclude improving this property with a Culver's restaurant, and possibly almost any fast-food restaurant that has a seating area.	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
We request a variance to require the 43 spaces shown on the proposed site design as it more than adequately serves the expected number of in-store customers throughout the day, including peak meal times.	



Jenny,

Thank you for taking the time to consider a Culver's restaurant for the Bismarck, ND market. I'm the Real Estate Manager for the State of North Dakota and involved in approving any potential sites. I included a list of approx. 28 current restaurants that have a parking amount similar to what we are proposing for Sammi Wu's future Bismarck location. We at corporate are in agreement that this will be a successful location for Sammi and I also attached the site plan that we have all signed and approved. If you have any questions, please don't hesitate to reach out to me.

Regards,

A handwritten signature in blue ink, appearing to be "Peter Siepe", with a large, stylized initial "P" and a long horizontal stroke extending to the right.

Peter Siepe

Real Estate Manager

[petersiepe@culvers.com](mailto:petersiepe@culvers.com)

RESTAURANT	CITY/STATE	# of Parking Stalls
Macedonia	Macedonia, OH	45
Lake Park	Lake Park, FL	44
Flagstaff	Flagstaff, AZ	47
St. Charles	St. Charles, IL	47
Rochester Hills	Rochester Hills, MI	46
Rapid City	Rapid City, SD	43
Jupiter	Jupiter, FL	46
Gainesville	Gainesville, FL	38
North Port	North Port, FL	45
Oak Lawn	Oak Lawn, IL	39
Port Charlotte	Port Charlotte, FL	42
New Richmond	New Richmond, WI	47
Clermont	Clermont, FL	45
Fort Myers	Fort Myers, FL	41
Lansing	Lansing, MI	46
Mesa	Mesa, AZ	45
West Valley City	West Valley City, UT	43
Traverse City	Traverse City, MI	43
Phoenix	Phoenix, AZ	42
Florence	Florence, KY	38
Brookings	Brookings, SD	42
Escanaba	Escanaba, MI	41
La Vista	La Vista, NE	45
Mundelein	Mundelein, IL	43
Flower Mound	Flower Mound, TX	43
Mason City	Mason City, IA	37
Lawrence	Lawrence, KS	34
Ripon	Ripon, WI	38



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

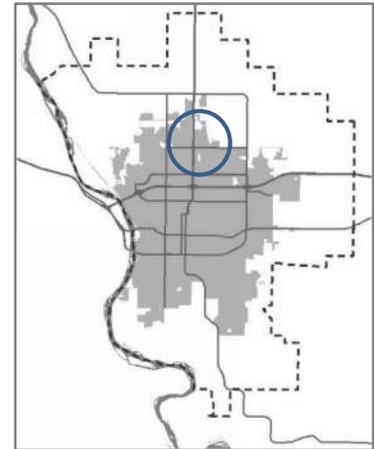
Agenda Item 4  
March 5, 2020

## Application for: Variance

TRAKiT Project ID: VAR2020-005

### 4Project Summary

Title:	Lot 1, Block 1, Meadowlark Commercial 5 <sup>th</sup> Addition Replat (4503 Skyline Crossings)
Status:	Board of Adjustment
Owner(s):	Charras Properties, LLC
Project Contact:	Ken Nysether, PE, SEH Inc.
Location:	In north Bismarck, between 43 <sup>rd</sup> Avenue NE and Skyline Boulevard east of Highway 83, along the east side of Skyline Crossing
Request:	Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)



### Staff Analysis

Charras Properties, LLC is requesting a variance to reduce the required number of off-street parking spaces from 84 spaces to 69 spaces in order to expand the bar area of an existing full-service restaurant.

The existing restaurant was constructed in 2018 and included a separate retail tenant space. At the time the building was constructed, the property met the off-street parking requirements for the full-service restaurant and retail tenant.

The zoning ordinance requires one off street parking space for space for each 75 gross square feet of a full service restaurant, one space for each 50 gross square feet of bar area and one space for each employee on the largest shift. Additionally, one space for each 250 gross square feet of retail space is required. The retail space required eight off-street parking spaces.

The applicant is proposing to expand the bar area of the existing full-service restaurant. According to the information provided by the applicant the bar area would require 23 parking spaces. Eight of those parking spaces were previously counted toward the retail spaces and would be included in this requirement. Therefore 15 new spaces would be required on site.

The Planning Division of the Community Development Department has initiated a zoning ordinance text amendment to revise the existing off-street parking and loading requirements. As part of the proposed revisions, the parking requirements for a full-service restaurant with a designated bar area are proposed to be revised to require one space for each 75 square feet of dining area, one space for each 50 square feet of bar area and one employee on the largest shift.

The Planning and Zoning Commission during their meeting of February 26, 2020 called for a public hearing on the proposed revisions which has been scheduled for March 25, 2020. If the Planning and Zoning Commission recommends approval of the proposed revised ordinance, it would be forwarded for final action by the City Commission. Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment in May 2020.

If the amendments are approved as proposed, and based on the information submitted by the applicant, the off-street parking spaces required for this property would be 58 spaces.

**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 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) requires one space for each 75 gross square feet for the restaurant portion of the building, one space for each 50 gross square feet of the bar area of the building, and one space for each employee on the largest shift, which would require 84 spaces. According to the information submitted with the application, 69 off-street parking spaces would be provided.

**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 CG - Commercial 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, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

**Attachments**

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

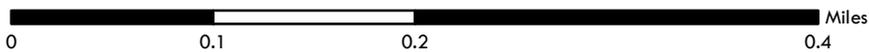
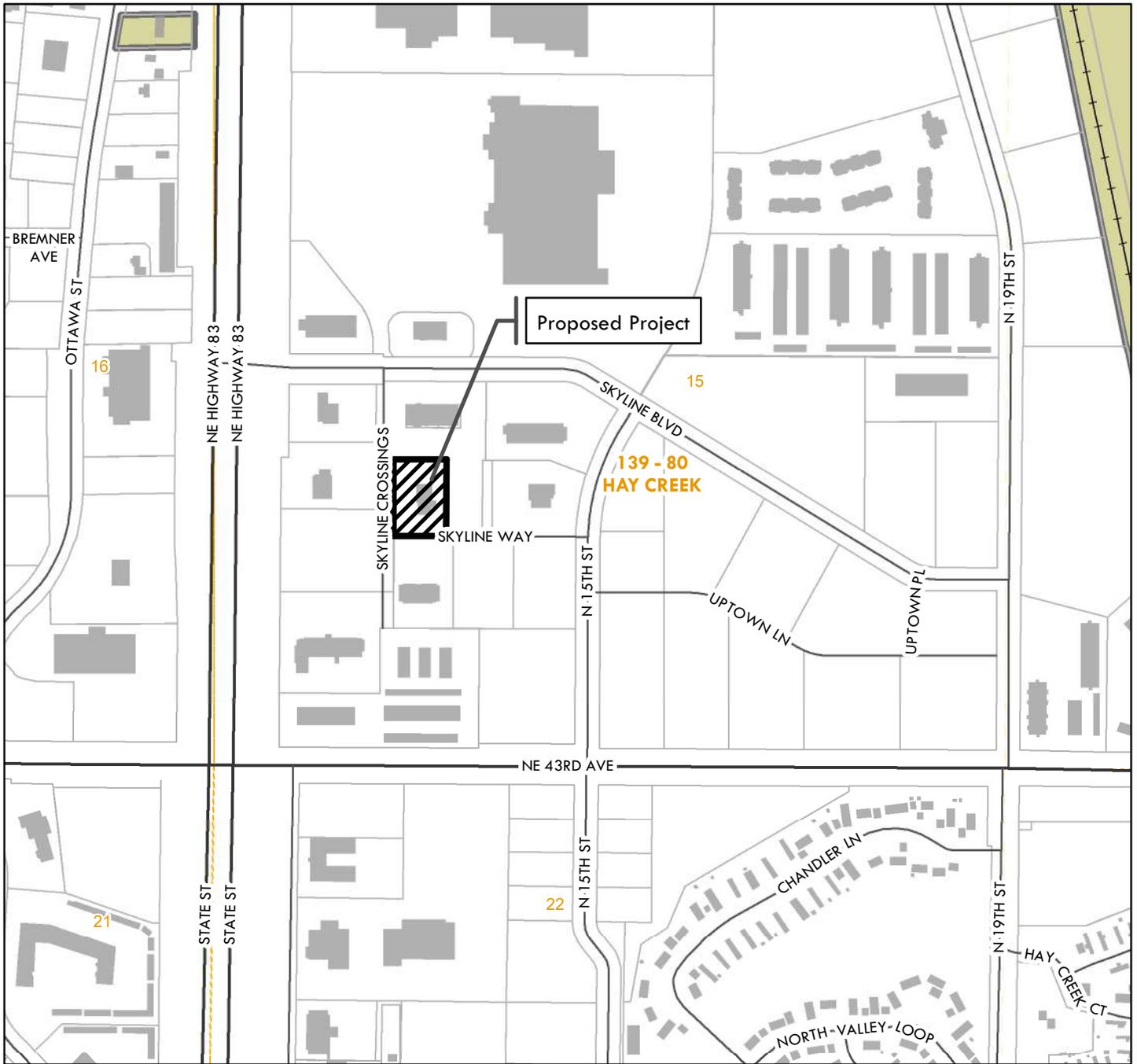
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner  
 701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)



# Location Map

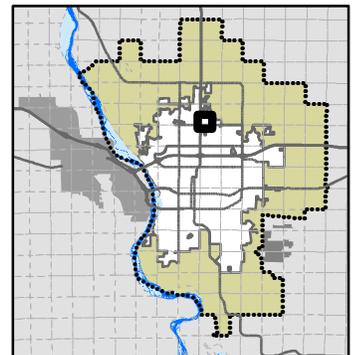
VAR2020-005

Lot 1, Block 1, Meadowlark Commercial 5th Replat



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck  
Community Development Department  
Planning Division  
February 13, 2020 (HLB)

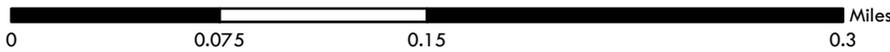
*This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.*



# Aerial Map

VAR2020-005

Lot 1, Block 1, Meadowlark Commercial 5th Replat  
(4503 Skyline Crossings)

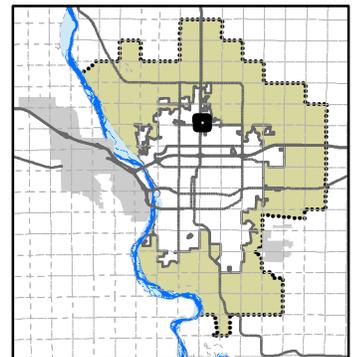


City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018

City of Bismarck  
Community Development Department  
Planning Division  
February 25, 2020

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









City of Bismarck  
 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](mailto:planning@bismarcknd.gov)

Last Revised: 01/2017

## WRITTEN STATEMENT OF HARDSHIP (VARIANCE REQUEST)

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

<b>PROPERTY INFORMATION</b>	
Property Address or Legal Description: <small>(Lot, Block, Addition/Subdivision)</small>	4503 Skyline Crossings
Location of Property:	<input checked="" type="checkbox"/> City of Bismarck <span style="margin-left: 150px;"><input type="checkbox"/> ETA</span>
Type of Variance Requested:	Parking
Applicable Zoning Ordinance: <small>(Chapter/Section)</small>	14-03-10 Office Street Parking and Loading
Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features – such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition – that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)	
The client is not looking for a variance as much they are looking for a pre-application of the future parking ordinance which would be accepted at about the same time as the completion of the remodel.	
With current parking requirements, the remodel would result in an additional 17 parking spots required.	
With the future parking ordinance reduction of 20%, that would reduce the parking requirement by 17 spots.	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
Again, the request is more associated with the timing of the parking ordinance revision. Build out of the space cannot commence until parking requirements are met, while parking requirements will likely be reduced before build out is complete.	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
The business owners association does have availability of parking in the shared lot immediately east of the site should the ordinance fail to pass.	

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
February 6, 2020**

The Bismarck Board of Adjustment met on February 6, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Vice Chair Clark presided.

Members present were Jennifer Clark, Ken Hoff, Curtis Janssen, Chris Seifert and Rick Wohl.

Member Michael Marback was absent.

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

**MINUTES:**

Vice Chair Clark called for approval of the minutes of the December 5, 2019 and January 2, 2020 meetings of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Seifert and seconded by Mr. Hoff to approve the minutes of the December 5, 2019 and January 2, 2020 meetings, as presented. With Board Members Clark, Janssen, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL / SIDE YARD) – LOT 12, BLOCK 1, HIGHLAND ACRES (833 CRESCENT LANE)**

Vice Chair Clark stated the applicants, Andrew and Sarah Rodenburg, are requesting a variance to reduce the required side yard setback from six feet to zero feet, located along the south side of Lot 12, Block 1, Highland Acres.

Ms. Wollmuth explained that the variance is being requested in order to dedicate a 20-foot access easement and construct a driveway along the southern portion of their property to provide access to Lots 1-4, Block 1, Torrance Hill Addition, which are east and adjacent to this property and are owned by the applicants. She said the applicants have indicated that they would build a single-family dwelling on these lots if the variance is approved as proposed. Ms. Wollmuth went on to say the zoning ordinance requires a side yard be measured from the interior edge of an access easement and if approved as proposed, the measurement from the interior edge of the access easement to the single-family dwelling would be zero feet. She added that the zoning ordinance also requires lots to have non-obstructed access to a public right-of-way and Lots 1-4, Block 1,

Torrance Hill Addition do not have a non-obstructed access to a public right-of-way. Ms. Wollmuth said it should be noted that when the lots to the east of this request were platted in Torrance Hill Addition in 1986, access to the lots was proposed to be from Crescent Lane. She further explained that the property developer at the time proposed the demolition of the single-family dwelling located at 825 Crescent Lane, which is located 2 lots to the south of the property with the proposed variance. City Staff during the review and ultimate approval of Torrance Hill Addition in 1986, also indicated that access could be provided from the south, through a 19.5-foot wide extension of Williams Street. She said the extension was platted as Lot 7, Block 1, Torrance Hill Addition and this extension was not favored by staff as additional right-of-way from adjoining properties would be needed to increase the width. This area was also obstructed by existing fencing, trees and an accessory building. She added that it appears that in 1982, prior to submittal of the plat, the property owners east of the proposed extension of Williams Street vacated the eastern half of the street right-of-way. Ms. Wollmuth closed by saying according to Planning Division documents, approval of Torrance Hill Addition was dependent on access to this area which was proposed to be provided from 825 Crescent Lane. Court documents from a 1987 South Central Judicial Court case, filed after approval of the plat, between adjacent property owners and the property developer, indicate that an access from 825 Crescent Lane violated the covenants for Highland Acres Addition as only single-family dwellings were permitted on residential lots. She said the summary opinion also states “The City may need to be convinced to extend Williams Street to the north or adjoining owners may need to assent to a private access road and finally it may be that an easement to the property may exist as an easement of necessity.” Ms. Wollmuth said a copy of the judgement summary is attached to the staff report. She noted to the Board that neighborhood covenants are an agreement between property owners in a subdivision, and the City of Bismarck is not a party to them nor does the City enforce them. Ms. Wollmuth stated that a variance is defined in the zoning ordinance 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.”

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning 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 above findings, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Mr. Hoff asked if any comments have been received from the property owner to the south. Ms. Wollmuth said they were notified but did not provide any comments. She added that it is likely that the APO had not reached them yet, as the mailing address is out of the country.

Mr. Wohl asked if the east half of Williams Street is vacated then what is left. Ms. Wollmuth replied the south 19.5 feet is left as indicated on the southern portion of Lot 7, Block 1, Torrance Hill Addition. She further stated that Lot 7 could have provided access, but because it was platted, it is not considered an access easement.

Vice Chair Clark opened the public hearing.

Brian Eiseman, Stoneshire Builders, said the owners bought the four vacant lots several years ago and have since been working on a way to access them in order to build a home. He said the proposal is essentially for a driveway, but the zoning ordinance does not have provisions for access through one property to another.

Vice Chair Clark asked if the Rodenburgs possess a small sliver of Lot 7 as well. Mr. Eiseman said they originally owned that piece and sold it to the neighbor to the south to accommodate his properties and the existing landscaping to include a fence. He said Mr. Rodenburg bought the four lots from adjacent property owner Mr. Reichert and then the home they occupy now happened to come for sale, so at the suggestion of Mr. Reichert they bought it with the understanding of there not being any current access to the four lots behind. He went on to say that the original developer abandoned Lot 7 as an access easement and turned it into a lot. He said he was unaware of any lawsuit and their intent was never to develop the property as four separate lots without demolishing the existing house. He said several meetings have been held with City staff as well as the utility companies and it seems that a new access easement would be the most reasonable option. He added that the Fire Department is willing to allow a less than 20-foot wide access with six-inch reinforced concrete and the existing fire hydrant, located along Crescent Lane where the proposed driveway would be located, can be moved to accommodate the property as well. He said there are some drainage issues at this location and he believes the construction of a driveway with curb and gutter could help collect more stormwater and lessen that impact on the adjacent owners, as well as making other utilities more accessible.

Mr. Hoff asked if the Rodenburgs own the home now. Mr. Eiseman said they do and they would continue to own it.

Mr. Hoff asked if demolishing the house has been considered. Mr. Eiseman replied it has not because they want to be good neighbors and maintain the character of the neighborhood.

Mr. Hoff said if it was demolished it could be used as an access point.

Mr. Rodenburg said that crossed their minds but after living there for 3½ years they are attached to the house and have made it aesthetically appealing. He said losing it completely would create an eye sore.

Mr. Hoff asked why it has taken six years of owning the current property to decide to do this now.

Mr. Rodenburg said time and money were an issue and they lived in Oklahoma City at the time. He said they moved into it after owning it for two years and have made improvements to it over the years but are ready to build something new now.

Mr. Wohl said the 1987 court case would indicate that the property to be demolished and turned into an access lot would not be allowed because of the restrictive covenants.

Mr. Eiseman said the covenants state there must be a certain amount of square footage of a house on the lot, so demolishing it would be against the spirit of the covenants. He said multiple provisions of the covenants no longer apply but the lawsuit was over the roadway being proposed to multiple lots versus to just one home.

Mr. Wohl said this is not much different from what was originally not allowed and he wonders if the owners have retained legal counsel to determine if that would happen again.

Mr. Rodenburg said they have not spoken with an attorney and the neighboring owner, Dr. Volk, explained the situation to them a bit differently.

Vice Chair Clark said it is up to the owner to work out the requirements of the restrictive covenants as the Board of Adjustment does not enforce those.

Mr. Eiseman said the lawsuit referenced was not originally brought to the attention of the Rodenburgs.

Kyle Engelhart, 925 Crescent Lane, said he fully supports this proposal and feels it would add value to the area. He said this is a great piece of property and he appreciates the Board's consideration and approval.

Phil McMahon, 903 Crescent Lane, said he has lived at his property since October 2014 and he fully supports this request. He said he is the Rodenburgs' direct neighbor to the north and he believes this project would be done courteously and compassionately.

Clark Preszler, 910 Ward Road, said he is also an adjacent property owner and he also fully supports the request.

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

Mr. Hoff asked if a private drive could be created if the existing house is demolished. Ms. Wollmuth replied the zoning ordinance would allow the existing house to be demolished and a private drive to serve the lots to the east. A lot combination to combine all of the properties owned by the Rodenburgs would also be permitted.

Mr. Wohl asked if it would be allowed if the properties are in different subdivisions. Ms. Wollmuth said that is still allowed as long as the zoning districts are the same, which they would be.

Mr. Wohl said he expected to hear more opposition to this request, especially from the neighbor to the south. He said he did consider the demolition option as well as he feels it would be cleaner and would move the access easement and further from the adjacent owner, but that is not the question right now.

Mr. Seifert said a home south of this property was what the owner wanted to demolish in 1987, but that was for the construction of multiple units at the time.

Mr. Wohl said once the properties are combined the covenants might not apply because it would be described in two different subdivisions.

Ms. Clark said the covenants would still apply because a portion of it would still be in Highland Acres, so only one residence would be allowed. He said the most restrictive of the covenants and the ordinance applies, but again, the City does not govern restrictive covenants.

Mr. Janssen said that why the four lots were purchased knowing there was not any access to them is puzzling. He said there is the issue of what could result further down the road, such as if their access were to become blocked and making sure a new owner of the existing house knows about the access point. He said he feels this will create other issues than what has been discussed so far.

Vice Chair Clark said she is torn between the hardship of a landlocked area and it being a nice green area, or a hardship of allowing a larger square footage home and trying to decide where the hardship lies.

Mr. Hoff said it would be easier and cleaner to demolish the house and have a nice big driveway to the new home, so he cannot favor this request at this time.

Mr. Janssen said it becomes a hardship as soon as construction is desired and there is not an access point to be had. He said this is a challenge. He said if there is not construction then there is no hardship.

**MOTION:** A motion was made by Mr. Seifert to approve the variance from Section 14-04-03(8) of the City Code of Ordinances (R5-Residential)(Side Yard) to decrease the required side yard setback from six (6) feet to zero (0) feet for the purpose of creating an access easement to provide access to the property east of Lot 12, Block 1, Highland Acres (Lots 1-2, Lot 3 less the North 16 feet and Lot 4 less the East 29 feet, Block 1, Torrance Hill Addition)(811, 815, 819 and 823 Torrance Place) in order to construct a single-family dwelling, based on the property being landlocked and that the requested variance is the minimum variance that would accomplish the relief sought by the applicant because access cannot be provided to the property from the south through Williams Street, as this would also need to be approved by variance as existing structures would not comply with the required setbacks either. The motion was seconded by Mr. Wohl and with Board Members Clark and Seifert voting in favor of the motion and Board Members Hoff, Janssen and Wohl 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.

## **OTHER BUSINESS**

There was no other business to discuss at this time.

## **ADJOURNMENT**

There being no further business, Vice Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 5:40 p.m. to meet again on March 5, 2020.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Jennifer Clark, Vice Chair

**From:** [Planning - General Mailbox](#)  
**To:** [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)  
**Subject:** FW: Andrew Rodenburg/Stoneshire Builders  
**Date:** Tuesday, February 4, 2020 2:06:34 PM

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**From:** hank reichert [mailto:[\[REDACTED\]](#)]  
**Sent:** Tuesday, February 4, 2020 11:56 AM  
**To:** Planning - General Mailbox <[planning@bismarcknd.gov](mailto:planning@bismarcknd.gov)>  
**Subject:** Andrew Rodenburg/Stoneshire Builders

Bismarck Board of Adjustment Members; Since I am not able to physically be present for the meeting considering the variance application of Andrew Rodenburg, I respectfully request consideration of my written support of the variance before this board. I have a history with this land having owned it before it was platted in the early 1980's and again beginning in year 2000. Andrew Rodenburg's planed use of this property is ideal as it allows increase in tax revenue to the city with the single family house, minimal impact on surrounding neighbors and, with your granting of the variance, simple and safe access. Development facilitated by the requested variance also meets Bismarck's desire to promote development of unused property within the city rather than all at the city periphery. I appreciate having the opportunity to speak to you via email in support of Andrew Rodenburg's request, thank you. Henry Reichert

**From:** [Planning - General Mailbox](#)  
**To:** [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)  
**Subject:** FW: Sarah and Andrew Rodenburg variance request  
**Date:** Wednesday, February 5, 2020 11:09:35 AM

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**From:** Phil McMahon [mailto:████████████████████]  
**Sent:** Wednesday, February 5, 2020 10:46 AM  
**To:** Planning - General Mailbox <planning@bismarcknd.gov>  
**Subject:** Sarah and Andrew Rodenburg variance request

Hello, my name is Phil McMahon and I live at 903 Crescent Lane which is directly next door to the north of the Rodenburg's. I am planning on attending the meeting on February 6th, but wanted to send a quick email to attest to my neighbor's character. I have lived at 903 Crescent Lane since October of 2014 and have known Andrew and Sarah in the capacity of neighbors and friends since 2016. They are kind, family-oriented and caring people that are always willing to lend a helping hand. The property they own that they are wishing to access by road with this variance is directly behind my house to the East. Being in this close proximity to the request I feel I have knowledgeable perspective on the case. Knowing both of them I see absolutely nothing wrong with building a road on property, which they own, to more easily access property, which they also own. I believe they will act courteously and compassionately in respect to their neighbors and the existing landscape to complete this and future projects. Thank you for your time and consideration.

Sincerely,  
Philip McMahon  
████████████████████

**From:** [Planning - General Mailbox](#)  
**To:** [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)  
**Subject:** FW: Rodenburg property  
**Date:** Thursday, February 6, 2020 4:11:02 PM

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

From: Bridget Hineman [<mailto:>  ]  
Sent: Thursday, February 6, 2020 3:20 PM  
To: Planning - General Mailbox <[planning@bismarcknd.gov](mailto:planning@bismarcknd.gov)>  
Subject: Rodenburg property

Hello,

This is Bridget Coleman I am contacting you to write a written comment about Sarah and Andrew Rodenburg. Our residence is 832 crescent lane right across from the rodenburgs. We are in agreement to allow the rodenburgs to add the easement and construct a single family dwelling. If you have any other questions or need anything else please let me know.

Thanks,

Judah and Bridget Coleman

# Bismarck Fire Department

To: Jenny Wollmuth, Planner

From: Brooks Martin, Battalion Chief of Support Services *Bm*

RE: Rodenburg Easement/ Access

Date: 2/6/2020

Cc: Brian Eiseman

Recently the Bismarck Fire Department was contacted in reference to a possible access easement at 833 Crescent Lane. The Bismarck Fire Department recognizes this unique situation. The following items have been discussed and shall be in place:

1. Access road must be for only one home
2. Road will be designed within specifications to support the weight of a fire truck.
3. Road will have an approved turn around for fire apparatus (IFC Appendix D D103.4)
4. Access road must be as wide as possible with 20' being optimum, narrowing to 15 ft. will be considered along the current residence. Using the existing driveway would not be optimal and could cause issues as an access point.
5. Consideration should be evaluated into placing ground pavers along the area that is less than 20 ft. wide.
6. Access road should be as perpendicular to Crescent Lane as possible.
7. A private hydrant will be required in close proximity of the new residence; final location shall be approved by the Fire Department.
8. At no point will the access road have a grade greater than 10% grade.
9. The current hydrant location will have to be moved, final location will need to be approved by Bismarck Public Works.



## *City Attorney*

**DATE:** May 14, 2019  
**FROM:** Janelle Combs, City Attorney  
**ITEM:** Discussion on Board Conduct and Governance

I was requested to provide a basic overview on common Robert's Rules of Order governance as well as North Dakota laws that often are impacted by work such as with the Board of Adjustment.

The by-laws provide that a concurring vote of at least four members is needed to reverse any decision of an officials or for a variance. Procedural motions can be had with a simple majority. As such, four is the quorum for any Board of Adjustment meeting.

1. To amend a motion on the table: Need motion and second, and then a simple majority vote to amend the motion; then you need to vote on the actual motion. Or the movant can ask to withdraw the motion. The chair can ask if there is any objection; if none, it is withdrawn. If there is objection, the withdrawal will be put to a vote.
2. Do not need majority if someone rises to a question of privilege (i.e. to complain about noise or heat) or rise to a point of order (i.e. protest breach of rules).
3. If you believe something is out of order without enough discussion or no actual second or a miscalculation of the votes, you can "rise to a point of order" which is one area where you do not need to be recognized by the chair before you speak.

Chair controls the meeting and controls who speaks by "recognizing" members. Discussion is not a conversation. No one should speak a second time until all who wish have spoken. Typically, once the topic is presented by staff, spoke about by the affected parties and all questions of those individuals are done, then a motion is needed before you can further discussion. Also the discussion should only occur after any public hearing is closed.

Findings for variances must include hardship finding that must be in the motion if you are to approve the variance (and it cannot be based on cost):

1. Where it can be shown in the case of a particular proposed subdivision, that strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider because of unusual topography, soils, or

other such conditions which would result in retarding the achievement of the objective of these regulations, then the board of adjustment may vary, modify or waive requirements so Title 14 & 14.1 325

substantial justice may be done and the public interest secured; provided that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations, or of the master plan.

2. In no case shall any variance, modification or waiver be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any arterial or collector street; in no case shall it be in conflict with the existing zoning regulations.

3. In granting variances, modifications or waivers, the board of adjustment may require such conditions as will, in its judgment secure substantially the objectives of the standards and regulations so affected.

4. Easiest method is to amend one, or more, of the findings of fact listed in the staff report list at the end of their memo.

#### Open records/meetings:

1. If you meet with more three other commissioners on a particular topic, it is a meeting that we need to disclose. Social or accidental meetings are exempt but be aware to not let the appearance of communication occur.
2. If you email or teleconference with more than 3 commissioners on Board of Adjustment business, it is a meeting requiring disclosure.
3. Emails, voicemails, letters, texts, notes, etc. documenting anything relating to Board of Adjustment business is discoverable by the public. We must turn those over, even from your personal or business email address or phones. And deletion rarely ever occurs without an electronic bread crumb trail. Several AG opinions specifically call out that if substantive issues are mentioned, even if attending another committee or meeting, and any Commissioner provides an opinion regarding public business, builds support or consensus, then open meetings law are triggered.
4. If there is suspicion that you are not handing over all information, you may have to hand over electronic access to your email or phone to review in camera for anything not disclosed. If you miss something and did not disclose it, that will be an open records or meeting violation.
5. Penalties for compliance can require corrective action to announce the prior meetings and provide all of the information discussed to the public. Additionally, there can be civil and criminal penalties, including if the AG's office feels the Board member should have known of the rules and will require that individual to be personally liable for noncompliance and those fees, without reimbursement from the City or insurance. Our errors and omissions insurance will not likely cover conduct that would rise to that level.
6. If it is kept, it is discoverable. The City will maintain the minutes and memos required under state law to remain, which is 3 years or longer if it involves certain projects. But you may have requests for any documents, especially emails or texts, if we believe you may be impacted.

If you have questions, please let Community Development or City Attorney Departments know. Jannelle is available anytime if you have a legal question on whether an issue is in compliance with her contact information below.

## **STAFF CONTACT INFORMATION**

Janelle Combs | City Attorney, 355-1340 or [jcombs@bismarcknd.gov](mailto:jcombs@bismarcknd.gov)