



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

May 7, 2020

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

Watch live meeting coverage on Government Access Channels 2 & 602HD, listen to Radio Access 102.5 FM Radio, or stream FreeTV.org and RadioAccess.org. Agenda items can be found online at www.bismarcknd.gov/agendacenter.

Due to ongoing public health concerns related to COVID-19, the City of Bismarck is encouraging citizens to provide their comments for public hearing items via email to jwollmuth@bismarcknd.gov. The comments will be sent to the Board of Adjustment prior to the meeting and included in the minutes of the meeting. To ensure your comments are received and distributed prior to the meeting, please submit them by 12noon on the day of the meeting and reference the agenda item your comment addresses.

If you would like to appear via video or audio link for a 3-5-minute comment on a public hearing item, please provide your e-mail address and contact information to jwollmuth@bismarcknd.gov at least one business day before the meeting.

The physical meeting room will be open to the public, but we certainly understand the public wishing to limit their exposure at this time, while still participating in government. Before entering the City-County Office Building, all individuals will be screened for COVID-19 symptoms or potential exposure. If unable to pass the screening protocol, they will be requested to participate in the meeting remotely, for the public's safety.

Most of the Board of Adjustment members will be attending remotely.

The number of participants attending in person, including the Planning and Zoning Commissioners, will be physically limited to a maximum of ten (10) occupants in the Tom Baker Meeting Room by way of the following:

Live simulcasting (video + audio) of the meeting on televisions in other parts of the City-County Office building.

Admitting those making presentations to the Board of Adjustment into the Tom Baker Meeting Room when they are asked to present or offer public input and, when that agenda item is complete, inviting them to return to the hallway or other room to watch the remainder of the meeting while maintaining social distancing.

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



1. Consider the minutes of the March 5, 2020 meeting of the Board of Adjustment.

PUBLIC HEARINGS

2. **Variance from Section 14-03-05(4)(a) of the City Code of Ordinances (Supplemental Provisions/Location of Accessory Buildings) and from Section 14-03-09(3) of the City Code of Ordinances (Non-Conforming Uses)** – The East 39.5 feet of Lot 9, Block 7, Northern Pacific Addition | VAR2020-006

Owner / Applicant: Stephen and Elizabeth Braus

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

OTHER BUSINESS

3. **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

4. **Adjournment.** The next regular meeting date is scheduled for June 4, 2020



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

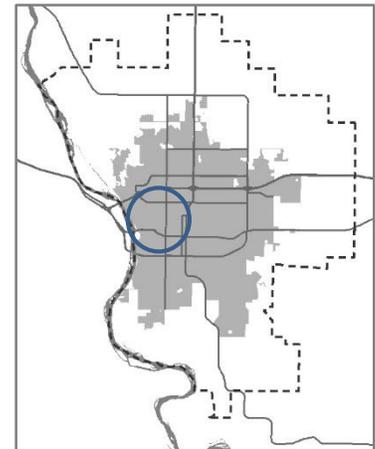
Agenda Item 3
May 7, 2020

Application for: Variance

TRAKiT Project ID: VAR2020-006

Project Summary

| | |
|-------------------------|---|
| Title: | The East 39.5 feet of Lot 9, Block 7, Northern Pacific Addition (231 West Avenue C) |
| Status: | Board of Adjustment |
| Owner(s): | Stephen and Elizabeth Braus |
| Project Contact: | Stephen Braus |
| Location: | In central Bismarck, west of North Washington Street along the south side of West Avenue C |
| Request: | Variance from Section 14-03-05(4)(a) of the City Code of Ordinances (Supplemental Provisions/Location of Accessory Buildings) and from Section 14-03-09(3) of the City Code of Ordinances (Non-Conforming Uses) |



Staff Analysis

Stephen and Elizabeth Braus are requesting variances to reduce the required side yard setback from three (3) feet to zero feet in order to construct an accessory building on an existing non-conforming lot with an existing non-conforming use.

The zoning ordinance makes provisions for minimum lot size, minimum lot width, and allowed uses for each zoning district. The proposed variance is located within the R5 – Residential zoning district and within a subdivision that was platted prior to 1953. The allowed use within this zoning district is single-family dwellings, and the minimum lot area is 5,000 square feet and the minimum lot width is 50 feet.

The proposed variance is located within a lot that is 5,925 square feet which conforms to the zoning requirements for area. However, the property is being used as a two-family dwelling and the lot width is 39.5 feet. The lot width and existing use do not conform to the zoning ordinance and are considered to be pre-existing non-conformities.

The zoning ordinance also makes provisions for the location of accessory buildings on a property within the R5 – Residential zoning district and allows an accessory building to be located three (3) feet from any side or rear yard setback, provided that the accessory building is placed in the rear yard at least ten (10) feet from the principal building or residence.

The applicant is proposing to demolish the existing 400 square foot garage, constructed in 1944 and located zero feet from side yard setback along the east property line, and construct a new 840 square foot garage in the same location. The proposed accessory building would be located in the rear yard at least ten (10) feet from the principal building and is proposed to be setback zero feet from the side yard setback located along the east side of the property.

As the existing accessory building is proposed to be demolished and a larger building would be constructed, the proposed accessory building must meet zoning requirements including the required building setback.

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 14-03-09(3) of the City Code of Ordinance (Non-Conforming Use) states, “No building used for a non-conforming use shall be enlarged, extended, reconstructed, or structurally altered, unless the use is changed to one which complies with the provisions of this title. Provided, however, permits may be issued for the reconstruction of an existing building to be continued as a nonconforming use if the following conditions are complied with: a. New use would decrease the number of living units or population density in case such is violated; b. New use would decrease the automobile parking congestion in the area; c. New use would not increase the cubical contents of the structure if such would violate provisions of this ordinance; d. Such reconstruction would be one in accordance with the City building, plumbing, electrical and fire prevention code, and; e. The issuance of such permit would not violate the provisions of paragraph 4 of this section.”

Paragraph 4 of this section states, “if any nonconforming structure or building in which there is a nonconforming use is damaged by fire, flood, explosion, wind, war or other catastrophe, in an amount equal to or greater than fifty percent (50%) of its assessed valuation, it shall not be again used or reconstructed to be used for any use except one complying with the provisions of this article for the district in which it is located.”

According to the information submitted with the application the existing 400 square foot accessory building, which is located zero feet from the property line along the east side of the property, would to be demolished by the applicant and a new 840 square foot accessory building would be constructed in the same general location. The proposed accessory

building would also be located zero feet from the east property line.

Section 14-03-05(4)(a) of the City Code of Ordinances (Supplemental Provisions/Location of Accessory Buildings) states, “In any residential zoning district except RR and RR5 (see the RR or RR5 district for accessory building regulations specific to that district), all accessory building except garages shall be located in the rear yard and shall not be less than three feet from the rear or side lot line when located at least ten feet behind the rear wall of the principal building. If the ten-foot distance behind the rear wall of the principal building cannot be maintained, the same setbacks shall be maintained as is required for the principal building. Any uncovered deck, patio or porch shall not be considered as part of the principal building for purposes of this section.” According to the information submitted with the application, the proposed accessory building would be located in the rear yard at least ten feet from the principal structure but would be located zero feet from the side property line located along the east 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.

Staff Recommendation

Staff recommends reviewing the above findings, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

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

Attachments

1. Location Map
-

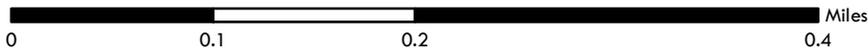
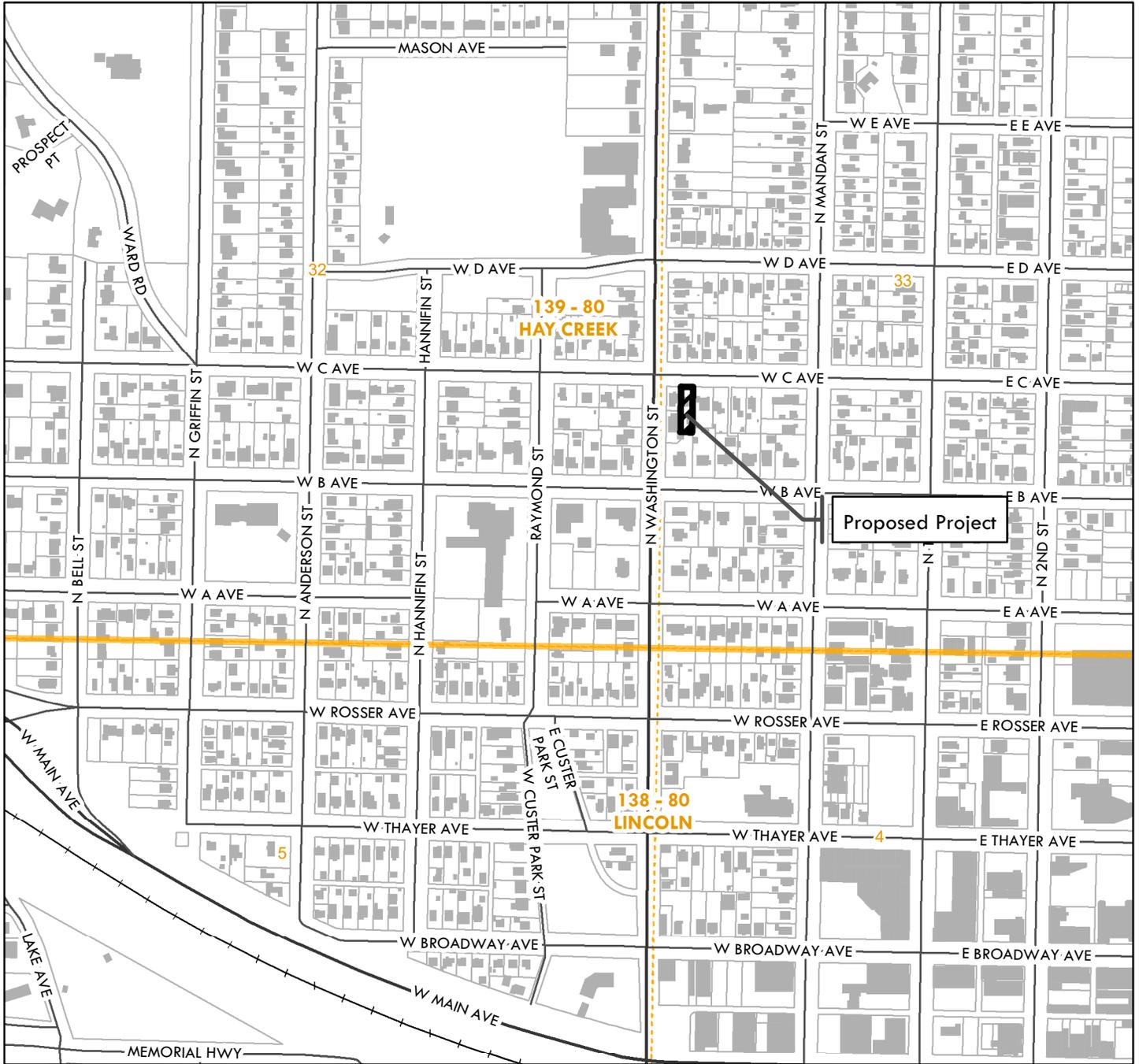
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

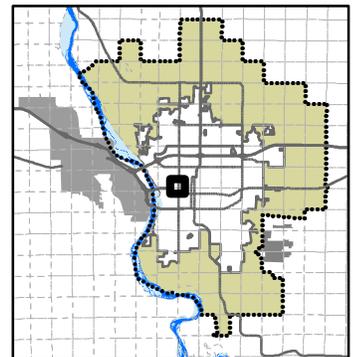
The East 39.5 feet of Lot 9, Block 7, Northern Pacific Addition

VAR2020-006



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
 Community Development Department
 Planning Division
 April 14, 2020 (HLB)

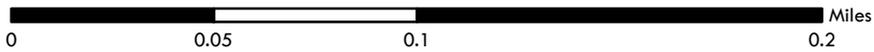
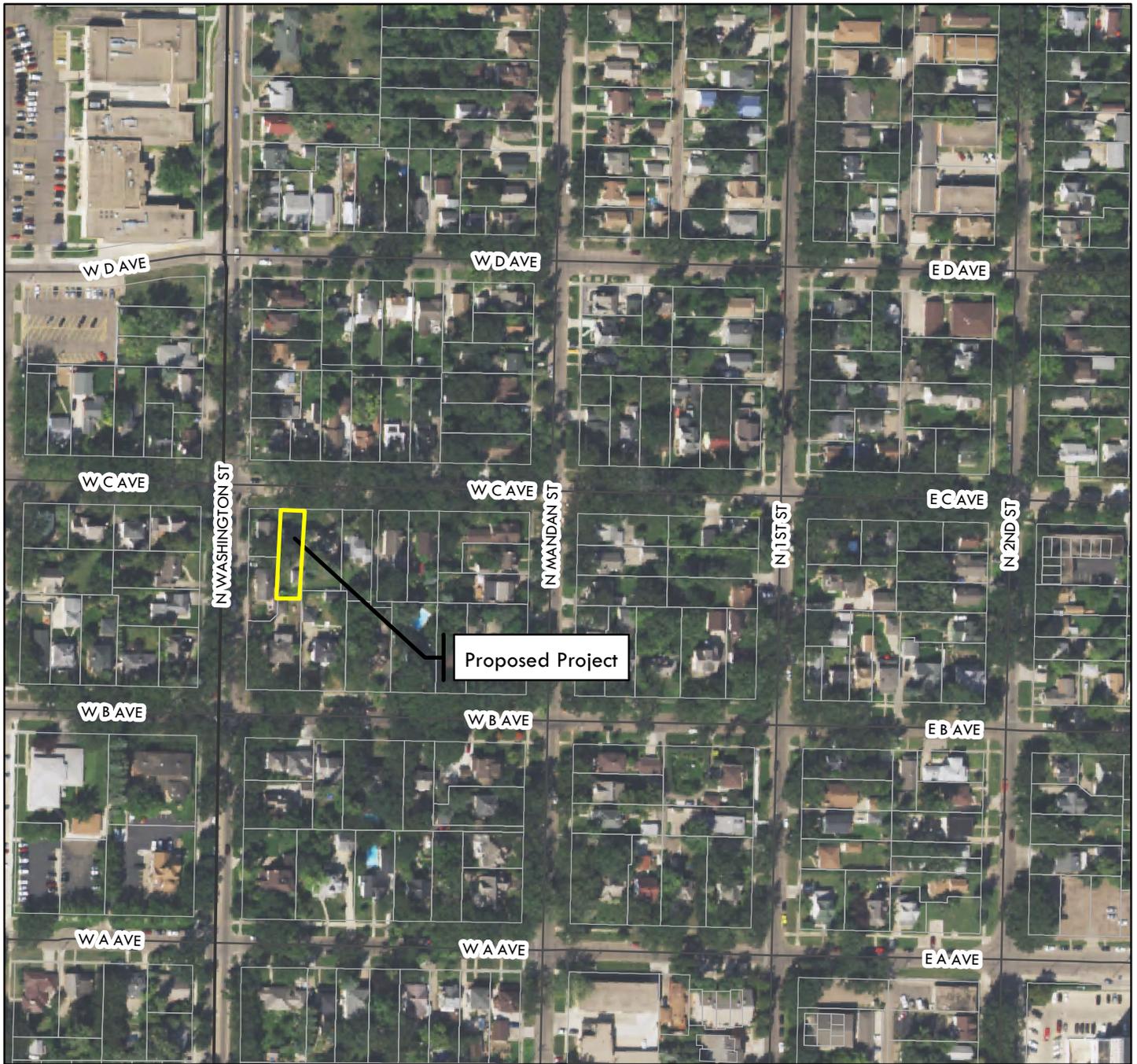
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Aerial Map

VAR2020-006

Part of Lot 9, Block 7, Northern Pacific Addition

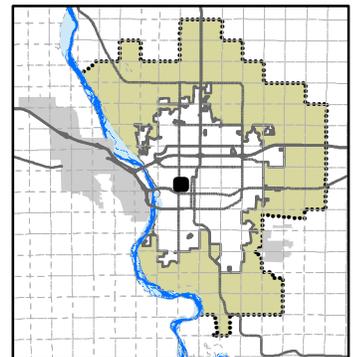


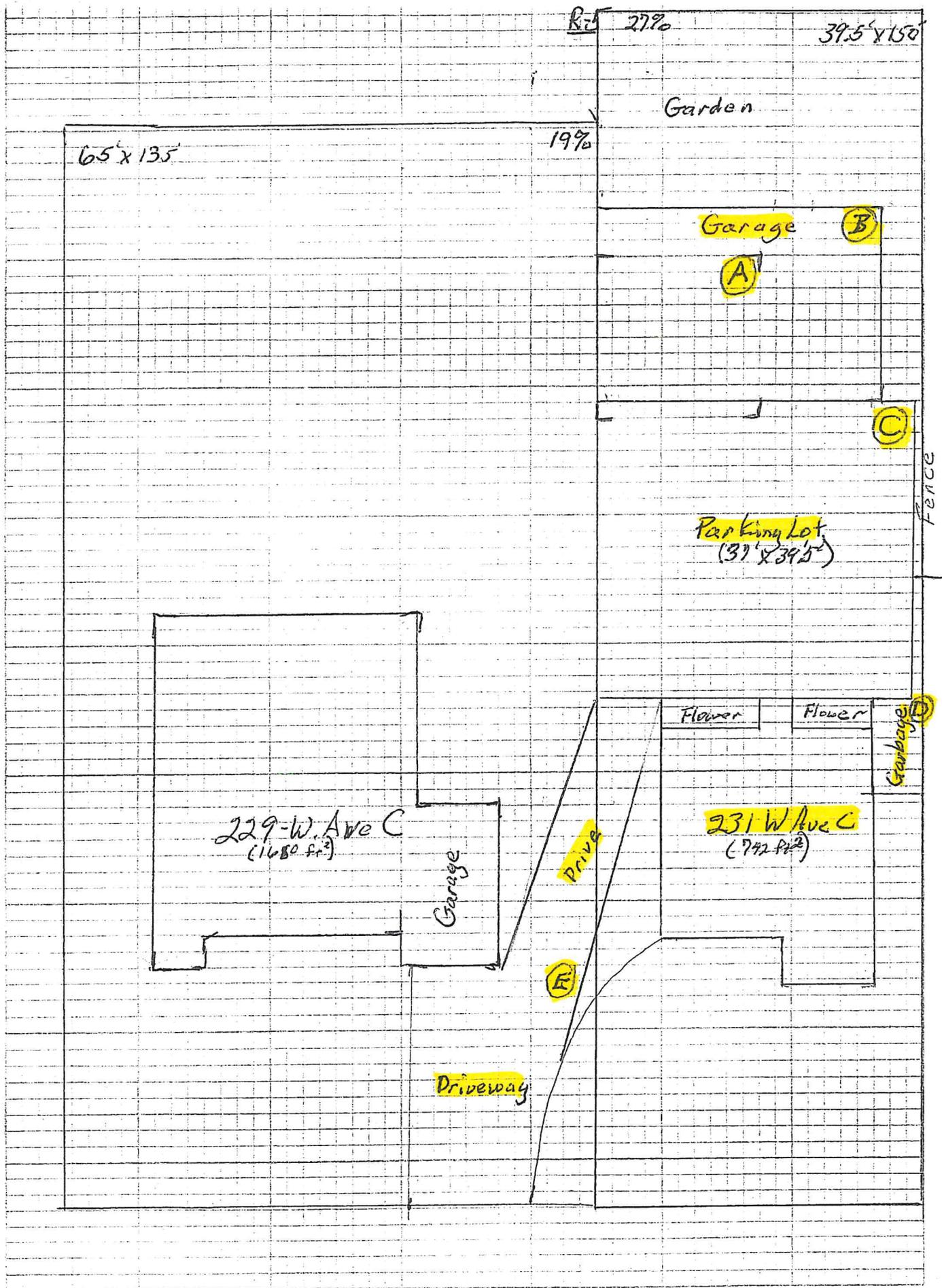
City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018

City of Bismarck
Community Development Department
Planning Division
April 29, 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.





231 W. Avenue C

Garage, Parking Lot, Driveway Project

Site Plan Notes

- A** Old Garage is 20'X 20' (400 sq. ft.)
- B** New Garage to be 24'X 35' (840 sq. ft.)
 - 10' side wall and raised slightly to improve drainage
 - 3 garage doors and a walk-in door with 3 windows
- C** Replace existing parking lot (35'X 39.5') to 37'X 39.5'
- D** Add Garbage Container Pad (6'X12')
- E** Replace shared Driveway to Street for both properties

The square footage of the duplex (742 sq. ft.) and new garage (840 sq. ft.) would be <27% of the total area of the lot.



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: <small>(Lot, Block, Addition/Subdivision)</small> | 231-W. Ave. C, Bismarck, 58501 |
| Location of Property: | <input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA |
| Type of Variance Requested: | Nonconforming lot + building setback variances |
| Applicable Zoning Ordinance: <small>(Chapter/Section)</small> | Section 19-04-03(5) R3 Residential/Lot Width Section 19-03-05(4) Supplemental Provision/Loc. of Accessory Bldgs |
| 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.) | |
| Attached | |
| Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship. | |
| Attached | |
| Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property. | |
| Attached | |

Statement of Hardship

231 W Avenue C, Bismarck, ND

Stephen V Braus

1. The strict application of the Zoning Ordinance would limit the current off-street parking for the 2 tenants occupying this duplex.
 2. This non-conforming lot is only 39.5 feet wide; the width of the parking lot adjacent to the existing 20'X 20' garage. The current garage sits on the east property line with the lot I also own and reside at (229 W Avenue C). This provides barely enough room (39.5 ft) to back out of the garage and turn to use the driveway to the street. The 3' building setback requirement would reduce and complicate turning space. The neighbor's fence on the west property line also limits turning radius (see site plan).
 3. I would like to maximize the turn-around by placing the new garage (24'X 35') at the current location on the east property line and adding 2' to the length of the parking lot (see site plan).
- The proposed garage location is approximately 24' from the back of the lot. I hope to preserve the vegetable garden on this part of the property.
 - I can preserve 6' access on the east side of the new garage; it is open lawn.
 - Beyond the new garage I also plan to replace the existing parking lot and driveway to the street; the driveway is shared with the lot I reside at (229 W. Ave. C). See site plan.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
March 5, 2020**

The Bismarck Board of Adjustment met on March 5, 2020, 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, Michael Marback, Curtis Janssen, Chris Seifert and Rick Wohl.

Staff members present were Ben Ehreth – Community Development Director, Kim Lee – Planning Manager, Brady Blaskowski – City 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 February 6, 2020 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 February 6, 2020 meeting, as presented. With Board Members Clark, Janssen, Marback, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

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 (202, 204, 210, 212 AND 220 EAST AVENUE A AND 500-506 NORTH 3RD STREET)

Chair Marback stated the applicants, 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 to be located on the S½ 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).

Ms. Wollmuth explained that the proposed multi-family building will include 68 apartments with a mix of efficiency, one- and two-bedroom units. She said 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, adding that the downtown parking district is an area where off-street parking and loading are not required. Ms. Wollmuth indicated that 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. She added that the Renaissance Zone Authority, acting as the Downtown Design Review Committee, approved the design of

the project at their meeting on January 9, 2020 and the proposed variance to reduce parking was not included in this approval; however, the Authority did place a condition on the approval of the design of the project based on approval of any necessary variances.

Ms. Wollmuth went on to say 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. She said 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 where off-street parking would not be required if the revised off-street parking and loading requirements are approved as proposed. Ms. Wollmuth explained that 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 ordinance amendment, it would be forwarded to the City Commission for final action. She closed by saying Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment by May 2020.

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 DF-Downtown Fringe 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.

Ms. Clark asked why a variance is being requested now if it is anticipated that the parking requirements are going to change soon.

Ms. Wollmuth said that is a valid question and stated it is likely that the project managers would like to begin the construction process as soon as possible. She said it cannot be guaranteed that the proposed changes to the ordinance would be adopted.

Chair Marback opened the public hearing.

Tory Jackson, attorney for the applicant, said this would be an infill project at the edge of the downtown area which is inherently difficult as it relates to parking. He said the current parking codes would not work and they tried different designs of the site, but want the project to be successful at the same time. He said if the ordinance does change the project would actually require zero off-street parking spaces. Even if parking is not required, the developer would still provide the proposed 54 off-street parking spaces. He said there are 16 other parking spaces available nearby at a property belonging to the same owner that would potentially open up some extra evening and overnight parking availability. Mr. Jackson said with all other parking options available, they feel the 54 spaces proposed to be provided are sufficient. He then said the target tenants are those who want to live in an area of convenient walkability and who would likely utilize transit and ride share services. Mr. Jackson closed by saying he personally lives just two blocks from this location and thinks it will be a great downtown project.

Ms. Clark asked if there is any other possible design that would require less parking. Mr. Jackson said they considered all other factors, such as a higher structure, and the market studies that were conducted found the proposed size to be the best fit and also within the City's goal of more downtown housing.

Ms. Clark said this is similar to the project that was proposed on Sweet Avenue recently and feels the building should be constructed to fit appropriately.

Mr. Janssen said there are 68 units to be constructed and asked if reducing that to 58 units would bring the parking into compliance.

Mr. Jackson said the parking need is calculated based on the mix of units, not the total number of units, and said they also need to consider what will be successful in the local rental market.

Mr. Hoff asked if Boutrous Group, LLC owns the other properties nearby with extra available parking that could be used if needed.

Albert Daou, representing Boutrous Group, LLC, said that is correct and said the mix of tenants generally seen with this type of structure is walkability focused. He said they do manage other properties and the parking concentration in the downtown area is high during the day, but availability tends to open up in the evenings. He said this block and adjacent blocks have possible lease parking options and they are being as proactive as possible with this project.

Ms. Clark asked if this request can wait until May when the parking ordinance requirements change or do not change.

Mr. Daou replied the developer is adamant about moving forward at this time rather than waiting.

Kate Herzog, Downtowners, said they support this request and a market analysis of the Downtown Core and Downtown Fringe zoning districts show 20% of employees of the City of Bismarck work in those areas, but there are only 500 housing units available. She said of those 500 units, only 25% do not have rental restrictions such as income or age. She said the blue route of the local transit service serves this area providing access to many basic needs such as groceries, the BSC campus and a variety of other services. She said there is also 150 open parking spaces in the parking ramps at any given time.

Louis Linderkamp, 1814 East Boulevard Avenue, said he has owned properties half a block north of this location since the mid-1980s. He said he has two duplexes in this area and this project is amongst many other small rental properties. He added that there is not enough parking and when there are events, such as the meal feeds at Trinity Lutheran Church, parking is even more difficult. He said there is already not enough parking for the Federal Building or MDU. While he supports development, he feels there is a need for a better plan here and there is another large project to be constructed directly west of this one in the near future as well.

Additional written comments in support of the request are attached as Exhibits A-B. An additional written comment in opposition of the request is attached as Exhibit C.

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

Ms. Clark said this is exactly the type of project the proposed parking ordinance amendments will address. She said there needs to be a uniqueness or hardship shown in order to grant a variance and she does not see that with this request.

Mr. Hoff asked if a different request could be brought back for a different variance if the design is redone.

Ms. Wollmuth said there is not a limit to how many times one person can request a variance, but they cannot duplicate the same request repeatedly.

Chair Marback said they would not redesign the project if the parking ordinance changes and said he cannot see a hardship in this request.

Mr. Janssen said this could be an important project to the area, but the criteria as it is written now is what needs to be met.

Mr. Seifert added if that ordinance change passes, they would not be required to provide parking at all.

MOTION: A motion was made by Mr. Wohl to deny the variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce

the required off street parking spaces for a 4-story multi-family building from 96 spaces to 54 spaces for the property located on the S½ 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). The motion was seconded by Ms. Clark and with Board Members Clark, Janssen, Wohl and Marback voting in favor of the motion and Board Members Hoff and Siefert opposing the motion, the motion was approved and the variance was denied.

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)

Chair Marback stated the applicants, 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 to be located on part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings).

Ms. Wollmuth explained that the proposed fast-food restaurant would be a single-story 4,060 square foot building with a drive-through and the zoning ordinance requires one space for each 60 square feet of the building and one space for each employee on the largest shift. She said 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 and 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 only and one space for employee on the largest shift. She stated 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 the ordinance is approved as proposed, the required off-street parking spaces for this fast-food restaurant would be 27 spaces. Ms. Wollmuth went on to say 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 to the City Commission for final action. She said Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment by May 2020. Ms. Wollmuth closed by saying 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.

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 CG-Commercial 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.

Chair Marback asked how this site compares to the existing Culver's site in Mandan. Ms. Wollmuth said they are very similar.

Chair Marback opened the public hearing.

Harvey Schneider, Toman Engineering, said SHG, LLC is the owner and representative for Culver's and they also own the current Mandan location. He said they are doing their due diligence and also have a lot modification being processed to split the property, in addition to this variance request for parking and a special use permit requested for the proposed drive-through. He said upon approval of all of those requests SHG, LLC would purchase the property. He said 60% of their business is drive-through and the proposed site plan shows 43 spaces being provided based on a seating capacity of 104. He added that the property realtor, current owner and proposed occupant are all here to answer questions if needed.

Mr. Hoff asked how the Mandan dining space compares to the new location.

Sammi Wu, SHG, LLC, said the Mandan location has 108 seats and the Bismarck location is proposed to have 96 seats.

Ms. Clark asked what the special circumstances surrounding the variance request might be.

Mr. Schneider replied because of the size of the lot the building size and parking available are maxed out.

Ms. Clark asked if a smaller restaurant could be constructed, adding that the Mandan location as been very successful.

Ms. Wu said at the Mandan location patrons tend to all park at the front of the lot but they do have parking further back on the property. With the current dining trends they felt this was the best size to pursue.

Mr. Schneider said the remaining half of the lot to the south of this one is under contract and is proposed to be a business similar to this one.

Mr. Janssen said the Mandan location has 54 parking spaces and is 4300 square feet while the Bismarck location is proposed to be 4060 square feet.

Ms. Clark asked if the project can wait until May when it is known if the new parking ordinance is approved or not.

Mr. Schneider said they would rather not wait given the short construction season and other steps that need to be taken beyond this request.

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

MOTION: A motion was made by Ms. Clark to deny the variance from Section 14-03-10(3) of the City Code of Ordinances (Off-street Parking and Loading) to reduce the required number of off-street parking spaces from sixty-eight (68) spaces to forty-three (43) spaces for the purpose of constructing a fast-food restaurant to be located on part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings). The motion failed due to a lack of a second.

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 reduce the required number of off-street parking spaces from sixty-eight (68) spaces to forty-three (43) spaces for the purpose of constructing a fast-food restaurant to be located on part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings).

Mr. Wohl stated he was unable to identify a hardship or any findings to modify, so he withdrew his motion.

MOTION: A motion was made by Mr. Janssen to deny the variance from Section 14-03-10(3) of the City Code of Ordinances (Off-street Parking and Loading) to reduce the required number of off-street parking spaces from sixty-eight (68) spaces to forty-three (43) spaces for the purpose of constructing a fast-food restaurant to be located on part of Lot 3, Block 1, Meadowlark Commercial 4th Addition (4424 Skyline Crossings). Board member Clark seconded the motion and with Board Members Clark, Hoff, Janssen, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was denied.

Mr. Janssen said there are other options and changing the building size is one option.

Ms. Clark said the property would be overbuilt and this neighborhood is already experiencing parking issues and she would be remiss to add to that issue. She said come May this might not even matter.

Mr. Wohl said that is a valid point and added that parking tends to spill onto the neighboring bank property already.

VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – LOT 1, BLOCK 1, MEADOWLARK COMMERCIAL 5TH ADDITION REPLAT (4503 SKYLINE CROSSINGS)

Chair Marback stated the applicant, 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 located on Lot 1, Block 1, Meadowlark Commercial 5th Addition First Replat (4503 Skyline Crossings).

Ms. Wollmuth said 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. She said 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. Ms. Wollmuth added that one space for each 250 gross square feet of retail space is required and the retail space required eight off-street parking spaces. She then explained the applicant is proposing to expand the bar area of the existing full-service restaurant into the vacant retail tenant space and, according to the information provided by the applicant, the bar area would require 23 parking spaces. She indicated 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.

Ms. Wollmuth explained 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 and 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 only, one space for each 50 square feet of bar area and one space for each employee on the largest shift. She closed by saying 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 to the City Commission for final action. She said Planning staff anticipates the City Commission will take final action on the proposed zoning ordinance text amendment by 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.

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 CG-Commercial 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. Seifert asked if part of this location was originally going to be occupied by an additional tenant. Ms. Wollmuth said that is correct. When the site plan for the building was reviewed and approved, the property was to include retail tenant space and the parking requirements were met at that time.

Chair Marback opened the public hearing.

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

Mr. Seifert said he does see a hardship with this request, as the space is already established and it is not new construction, rather an expansion into a space that has not yet been occupied by a different tenant.

Mr. Wohl asked if utilizing the parking lot to the east is an option.

MOTION: A motion was made by Mr. Janssen to table the discussion and reopen the public hearing so that Mr. Wohl's question could be answered. Mr. Seifert seconded the motion and with Board Members Clark, Hoff, Janssen, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved the public hearing was reopened.

Mike Ilse, Aspen Group, said the lot to the east was provided to meet the parking requirements for the building containing Once Upon a Child and Dunn Brothers Coffee and would not be an option for shared parking at this time, as it was constructed to meet to the codes of that location. He said permission would need to be obtained from the condo association for the building as well as each individual tenant if shared parking is to be provided.

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

Mr. Janssen said an expansion should be within the limits of what is available for parking.

Ms. Clark said there is a bit of at track record with this area and there is some sympathy to be had here, but this request could also wait and be addressed in May when the parking ordinance is changed.

MOTION: A motion was made by Mr. Seifert to approve the variance from Section 14-03-10(3) of the City Code of Ordinances (Off-street Parking and Loading) 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 located on Lot 1, Block 1, Meadowlark Commercial 5th Addition First Replat (4503 Skyline Crossings), based on the hardship of the adjacent space not being occupied and needing to be filled, and also that the finding of the variance is based on a special circumstance and strict application of the ordinance would deprive the owners of the full use of the property. Ms. Clark seconded the motion and with Board Members Clark, Seifert, Wohl and Marback voting in the favor of the motion and Board Members Hoff and Janssen opposing the motion, the motion was approved and the variance was granted.

OTHER BUSINESS

Ms. Wollmuth said the proposed update to the parking requirements is in part due to the level of variance requests received for parking reductions over the last five years. She said in that time, 22% of the requests were for parking reductions which eliminated the requirement for 1200 parking spaces total. She said development trends are changing and it is staff's desire to have the ordinance in place by May. She added that a public input meeting is scheduled to be held on Thursday, March 12th, and staff will then take the draft ordinance to the Planning and Zoning Commission for a public hearing on March 25th. The Planning and Zoning Commission can approve it to be forwarded it on to the City Commission for final action, deny it, or provide any direction on suggested changes.

Mr. Janssen said he is noticing a lot of multi-family construction adjacent to single-family residences and he did read the draft ordinance and said it will be handled the best way possible.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:17 p.m. to meet again on April 2, 2020.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair

From: [Jenny Wollmuth](#)
To: [Hilary Balzum](#); [Kim Lee](#); [Ben Ehreth](#)
Subject: Fwd: Renaissance Lofts, BOA
Date: Thursday, March 5, 2020 12:27:47 PM

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From: Emily Sakariassen <[REDACTED]>
Sent: Thursday, March 5, 2020 11:35:34 AM
To: Jenny Wollmuth <jwollmuth@bismarcknd.gov>
Subject: Re: Renaissance Lofts, BOA

Hello,

My name is Emily Sakariassen. I am writing to you to show support and favor for the proposed development on Avenue A referred to as the "Renaissance Lofts," including their requested variance regarding the required number of parking spots, which I understand to be 96 for the 65-67 units planned.

I grew up in this neighborhood, on Mandan Street and Avenue B and the historic homes and charming tree-lined streets are the very environment that inspired me to become a preservation specialist and architectural historian when I grew up. I work to record the buildings and structures that matter to us, collectively, and I document the ways in which we value them. So, naturally, issues like the one before you pique my interest even when they aren't so close to home.

I currently reside at 409 N Mandan St., a 6-unit apartment complex built mid-century on a block that was historically single-family dwellings but is now almost entirely apartments and condos. My building is affectionately known as "the Laurel" and though it replaced what were probably very attractive small homes, I do love it and I love that there are options for people in my demographic to live in central Bismarck. When I moved back to this city as a young professional, I intentionally chose an affordable apartment in this neighborhood because of its charm, its proximity to downtown and the Cathedral Area Historic District, and its walkability--I love to take walks, to shop or dine downtown, but also around this neighborhood just for the exercise and enjoyment of its beauty. I know those are some of the reasons my neighbors and those in surrounding apartments and condos chose to live here, too, because we pass each other on our walks, wave at one another on the street, and exchange pleasantries just like people should do in a real, thriving, neighborhood.

As a neighbor to the proposed project, and someone who loves this part of town, I'm very happy to see that someone has applied true forward thinking in their design for new development to blend into the existing area. This space has been a surface parking lot for many years now. Surface parking lots are dead zones in our urban landscape, especially after 5pm, and I say, the fewer the better. Recognizing that not everyone subscribes to that sentiment, it's my opinion as a young professional, that the demographic they are likely to attract with this development are people who are willing to accept some trade off in order to live in this prime location. I certainly did and it's worth it. That trade off will come in the form of mixed on-site and on-street parking options that don't necessarily meet the standard ratio used for determining the number of parking spaces per housing unit. I think their plan has

merit and will work for their prospective residents. The walkability (and bikeability) to amenities has real appeal these days and I feel confident that this development will do a good job filling the transitional space between commercial downtown and establish residential neighborhoods. And they aim to fill it with residents will frequent downtown businesses, appreciate the benefits of this area, and, hopefully, for it, be better neighbors to those to the north and west.

Increased surface parking, or rather its encroachment on historic, charming, livable neighborhoods, is something that truly grieves me to see happen in this town. Rather than see surface parking and deferred maintenance of houses-turned-rentals continue to reduce the character, charm, and value of Bismarck's residential and commercial--some of our quaintest, greenest, most walkable, most family-friendly neighborhoods, this group is proposing a reasonable, responsible, respectful solution to enhancing central Bismarck, and fitting an apartment complex into this neighborhood. They have convinced me through this plan that they care about the existing neighborhood character and are willing to accommodate it while improving this blighted block. If they require a variance to do so, I say let them have it!

Thank you for your time and consideration,
Emily Sakariassen

--

Emily Sakariassen, M.S. | Architectural Historian

Metcalf Archaeological Consultants, Inc.

701-258-1215 office | [REDACTED] mobile

metcalfarchaeology.com



"This communication is intended solely for the addressee; it is confidential and not for third party unauthorized distribution."

From: [Susan Dingle](#)
To: [Planning - General Mailbox](#); [Jenny Wollmuth](#); [Hilary Balzum](#)
Subject: Response to Board of Adjustment on Project at Ave A and 2nd and 3rd Streets--Boutrous Group
Date: Thursday, March 5, 2020 1:42:01 PM

I was unable to find email addresses for members of the Board of Adjustment, so I looked at past minutes and submissions and used your addresses to send this. I am unable to attend this afternoon's meeting, but I wanted to express my enthusiasm and support for this project, as proposed. The parking-space issue, for me, is moot. There will be enough parking, especially since a number of residents will be walking, bicycling, riding the bus, taxi-ing, or using a ride-share service, and cities increasingly are moving away from heavy-duty car-centered parking space requirements. Let's be in the fore-front!

To put these remarks into context, I am a resident, homeowner, and regular voter living in the city of Bismarck. I also am a regular attender of a number of public meetings. It is fair to say I have a number of ongoing concerns and interests about development and land use in the city of Bismarck, especially downtown and near downtown, but also generally in the city.

I enthusiastically support and look forward to the proposed development by the Boutrous Group on 2nd and 3rd streets off Avenue A.

This project presents a true understanding of and response to the infill development approved by the city a few years ago. It also is a positive response to the aims of the Bismarck Strategic Plan with themes of signature spaces, all ages & wages, social health, 21st century business hub, complete connectivity, and government excellence. Affordable apartments for people who want to live near downtown and who plan on walking, bicycling, using ride-sharing services, and riding on public transit to get to their destinations are exactly what we need. Further, the developers, the Boutrous family, are long-time residents of Bismarck and previously of rural North Dakota. The Boutrouses have contributed to the business and cultural life of the city and have had businesses in this area for more than 50 years.

I have been looking forward to seeing this property developed as a living and working space for several years now. I live about five blocks away from it and am a confirmed pedestrian. I do not have a car. I walk, bus, taxi, or am a passenger on an ride offered by a friend everywhere I go. My routes take me by these properties several days a week. The parking lot and empty lot they occupy are under-used and unused spaces. They create a negative picture of downtown as a place of razed buildings and parking lots that stand empty at night and on weekends.

The proposed design has 54 parking spaces, and on-street parking should be adequate for the anticipated residents. The space is designed as affordable apartments for residents who will walk, use public transit, bicycle, or use ride sharing services. Much less often, some may drive. There will be enough parking!

Emphasis on free parking and parking lots are not economic producers, but they have a cost. They remove prime land from other economic uses, such as residences and stores. The current trend in

community planning and zoning ordinances is moving away from car-centered design. Multiple parking spots per unit and even requirements for one spot per unit are less used now in zoning and planning practices across the nation.

Reduction of parking spaces and smaller and fewer parking lots allow for creation of more affordable housing. These practices create a more walkable, pedestrian-friendly city, and they open up possibilities for more curbside activities and spaces to meet and linger along the sidewalks. This is part of creating the Bismarck Strategic Plan's goals of signature space, social health, 21st century business hub, and connectivity. To see results from other places, see Donald Shoup's [The High Cost of Free Parking](#) (Chicago: Planners Press, 2004) and Jeff Beck's [Walkable City: How Downtown Can Save America, One Step at a Time](#) (New York: North Point Press/Farrar, Strauss and Giroux, 2012, [paperback] 2013).

Please approve this development as proposed. Bismarck is ready for more residential space near downtown and more affordable housing in the downtown fringe.

Respectfully, Susan Dingle

From: [Sandra Bogaczyk](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Boutrous Group variance request
Date: Thursday, March 5, 2020 4:57:25 PM

From: Terry Whitmore [<mailto:>]
Sent: Thursday, March 5, 2020 1:50 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Boutrous Group variance request

Sent from [Mail](#) for Windows 10

I was able to attend the first hearing on this matter when the board approved the building of this structure after many people spoke against it. I don't know if I will be able to attend the March 5th hearing, but I do want to express my concerns with this additional proposal.

There is a reason the city established a code for off street parking. The property for the proposed multi-family dwelling unit is adjacent to the historic Cathedral district. Most cities want to preserve these districts as a highlight to their history and source of pride to the community, thus the "historic" designation.

This is a quiet, stately neighborhood with beautiful design architecture. It attracts many walkers that enjoy looking at the unique homes and many are accompanied by small children and pets.

The streets surrounding the proposed apartment units are narrow with parking only on one side of the streets. During the winter months, now, many of the streets can't accommodate parking or driving due to lack of snow removal.

This variance would leave a possible 42 or more vehicles looking for parking space. And this would be just for the tenants, not including their guests. This would only create more congestion on these already narrow streets.

Please don't compromise the integrity of this neighborhood. Please vote NO on this variance request.

Sincerely,
Mary Whitmore