



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

July 2, 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 Board of Adjustment members, 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 May 7, 2020 meeting of the Board of Adjustment.

PUBLIC HEARINGS

2. None.

OTHER BUSINESS

3. **Appeal of Zoning Determination | Number of Dwelling Units** - Lots 14 and 15, Block 4, Southbay Fifth Addition (4408 and 4412 Downing Street) | APPL2020-001

Owner / Applicant: Dennis Wetzel

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

ADJOURNMENT

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



STAFF MEMO

City of Bismarck
Community Development Department
Planning Division

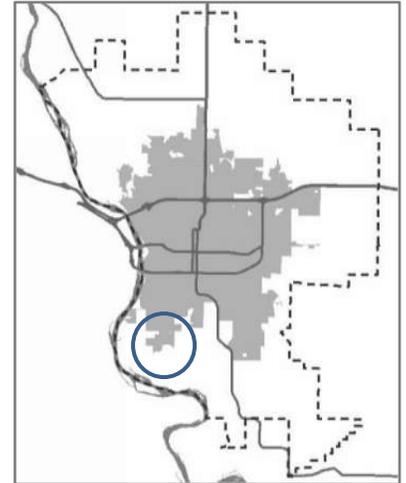
Agenda Item #2
July 2, 2020

Application for: Appeal of Zoning Determination

TRAKiT Project ID: APPL2020-001

Project Summary

Title:	Lots 14 and 15, Block 4, Southbay Fifth Addition (4408 and 4412 Downing Street)
Status:	Board of Adjustment
Owner(s):	Dennis Wetzel
Project Contact:	Dennis Wetzel
Location:	In south Bismarck, between West Burleigh Avenue and 48 th Avenue SW along the west side of Downing Street
Request:	Appeal of Zoning Determination



Dennis Wetzel is requesting an appeal of a zoning determination made in April 2020 by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) for properties located in the R10 – Residential zoning district legally described as Lots 14 and 15, Block 4, Southbay Fifth Addition.

Applicable Sections of the Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (General Provisions and Definitions/Definitions) defines a dwelling unit as, “A building or portion thereof providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.”

Section 14-04-06(1) of the City Code of Ordinances (R10 – Residential District / General Description) states, “The R10 – Residential district is established as a district in which the principal use of land is for single-family and two-family dwellings. For the R10 – Residential district, in promoting the general purposes of this article, the specific intent of the section is: a. To encourage the construction or placement of and the continued use of the land for single-family and two-family dwelling on urban lots, b. To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single-family and two-family dwellings in the district, c. To encourage the discontinuation of existing uses that would not be permitted as new uses under the provisions of this ordinance, d. to discourage any use which would generate traffic on minor streets other than normal traffic to serve residences of those streets, e. To discourage any use which because of its character of size would create requirements and costs for public services such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were development solely for single-family and two-family dwellings.”

Section 14-04-06(2) of the City Code of Ordinances (R10 – Residential/Uses Permitted) states, “The following uses are permitted: a. Single-family dwelling, b. Two-family dwelling, c. Education group, d. Public recreation group, e. Row house, attached single-family dwelling in groups of two (2).”

(continued)

Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken) states, “An appeal to the board of adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Zoning Administrator and with the board of adjustment at the community development department, a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Zoning Administrator and on due cause shown.”

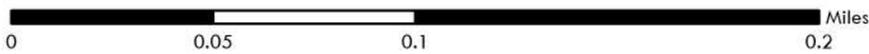
Staff analysis and determination

Staff have reviewed the building plans for the proposed structure and have found that all of the features that indicate a separate dwelling unit including independent access, separate sanitation facilities, and separate eating/or cooking facilities are present in each of the units. Therefore, the Planning Manager / Zoning Administrator has determined that the proposed structure is a three-unit dwelling. A three-unit dwelling is not permitted within the R10 – Residential zoning district and cannot be constructed as proposed by the applicant on Lots 14 and 15, Block 4, Southbay Fifth Addition.

Attachments

- | | |
|---|--|
| <ul style="list-style-type: none"> 1. Location Map 2. Aerial Map 3. Appeal of Zoning Determination 4. Building Plans Submitted with Appeal 5. Zoning Determination Email | <ul style="list-style-type: none"> 6. Original Building Plans – Version 1 7. Original Building Plans – Version 2 8. Zoning Interpretation –
Definition of a Dwelling Unit 9. Section 14-04-06 of the City Code of Ordinances (R10 Zoning District) |
|---|--|

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

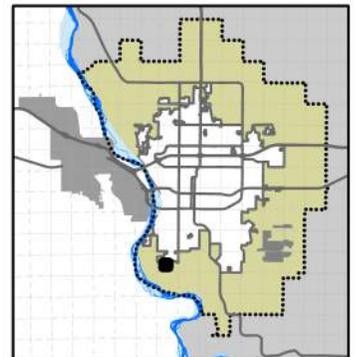


- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA
- Lots Pending Approval

Section, township, and range indicated in orange

City of Bismarck
 Community Development Department
 Planning Division
 June 15, 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 herein.

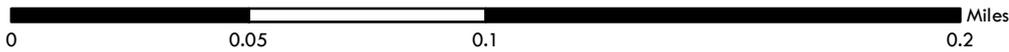
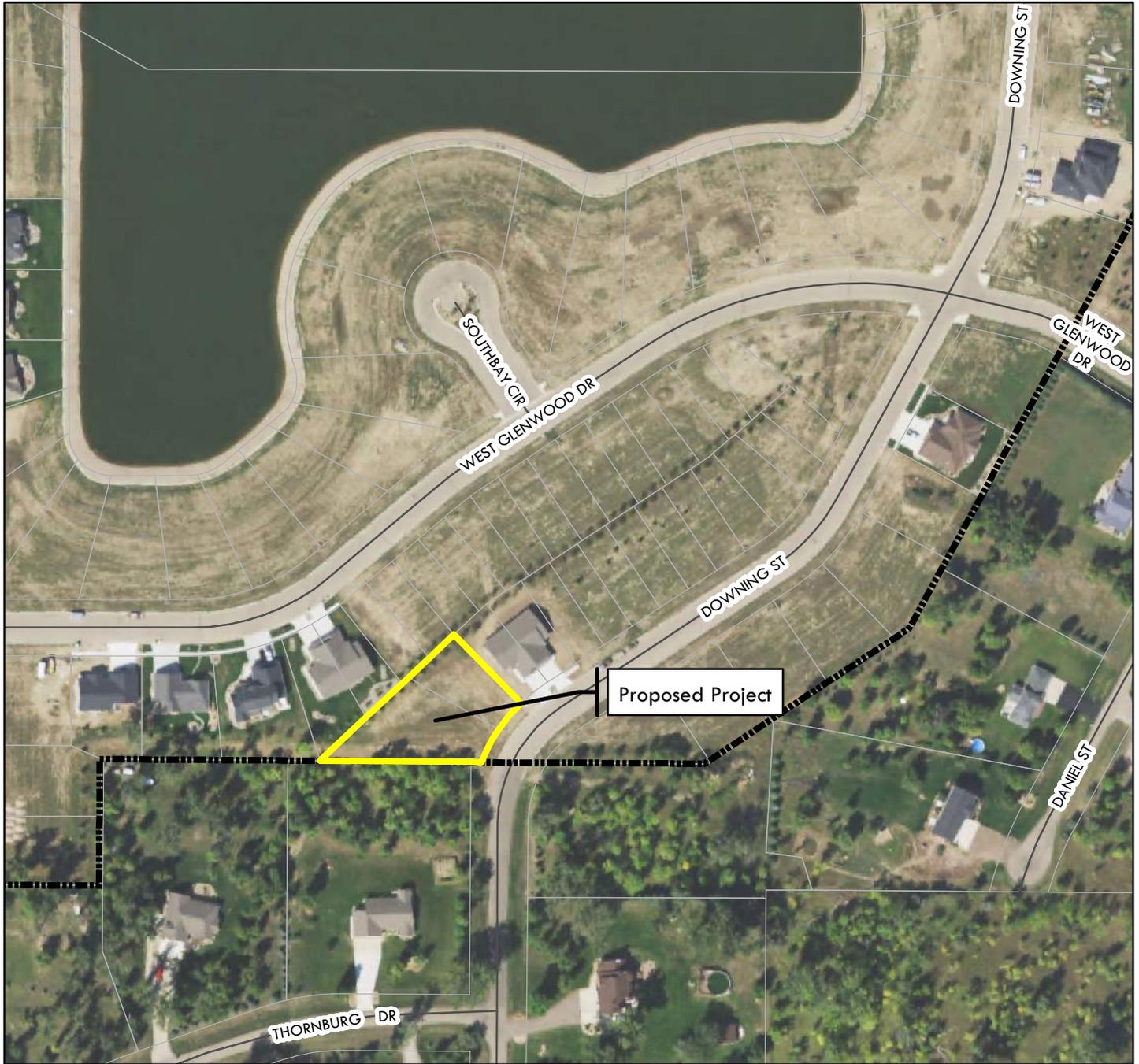




Aerial Map

APPL2020-001

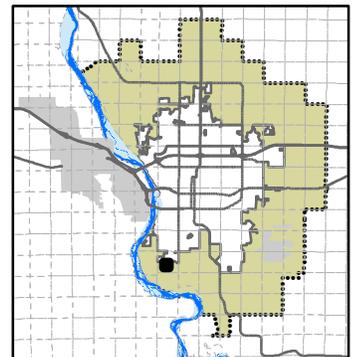
Lot 14 and Lot 15, Block 4, Southbay 5th Addition



City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018

City of Bismarck
Community Development Department
Planning Division
June 24, 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.

June 7, 2020

To: Board of Adjustmet

From: Dennis Wetzel

Subject: Lots 14 and 15 Block 4 Southbay 5th addition

I am not requesting a variance but to appeal a determination by the Planning Department regarding my proposed project. I want to build a 2 unit twin home, townhouse, row house, whatever you call it on a R10 zoned property. This is a slab on grade structure and I am building the left portion as one unit to account for the fact there is no basement. The left part has a family room, a 2nd kitchen and additional bedrooms along with a 3 stall garage. There is no door the separates this townhome. There will be an address of 4412 Downing Street, one water line, sewer line, electrical service etc. Lot 14 will be a separate townhome with it own entrance, water and sewer line, electrical, heating, etc.

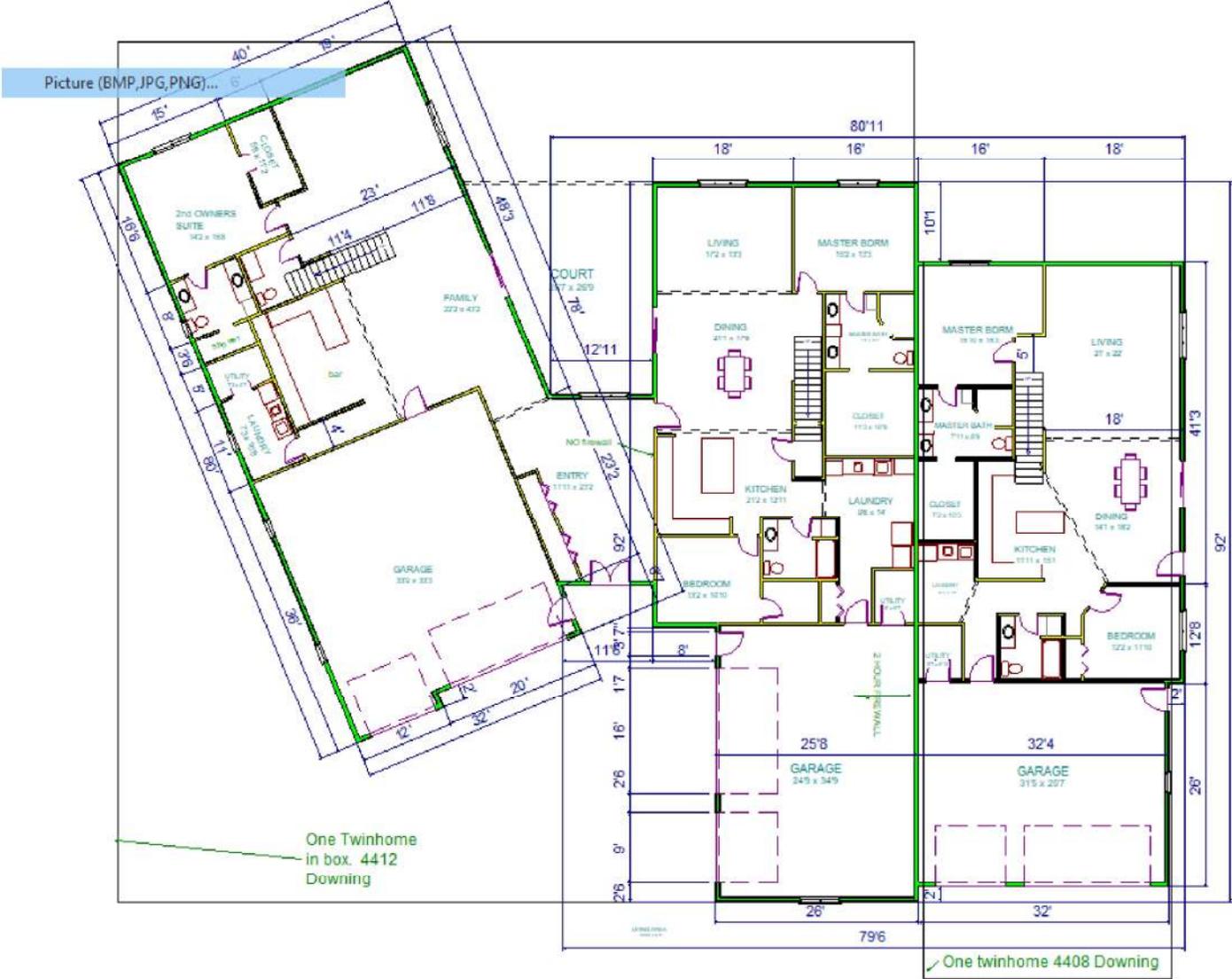
The project fits under the row house/townhouse definition. The definition states "each unit in a townhouse has a private front entrance". A row house states "each unit in a row house has private front and rear entrances". I disagree with item 2 in Kim Lee's letter and left townhome 4412, Downing is designed to only have one private entrance. If it will make the planning department happy, I can remove the one door that separates 4412. I put a door in just because one side will be used more than the other and a lot of homes have an interior door leading to the basement.

Please review the information below specifically section 14-04-06. This project fits the requirements for lot size, width, depth and other requirements and I don't feel a variance is required. I want an independent party to review the project, existing zoning. I have received little to no assistance from the planning department and I first met with the planning department back in March. I have had Swenson Hagen do the site plan etc. I can't find the language in item 2 of Kim's letter she has stated in section 14. The plan is designed to be a 2 unit townhome, with only 2 private entrances consistent with 14-04-06..

I have copied sections from an overview of the purpose of the Board of Adjustment, an email IO received from Kim Lee and section 14-04-06 regarding R10 residential district.

1. The Board of Adjustment is a six member board appointed by the Bismarck City Commission to decide appeals from an order, requirement or determination made by an administrative official of the City of Bismarck. The Board of Adjustment is empowered to make interpretations and grant variances related to zoning regulations.

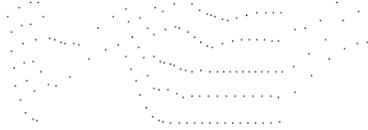
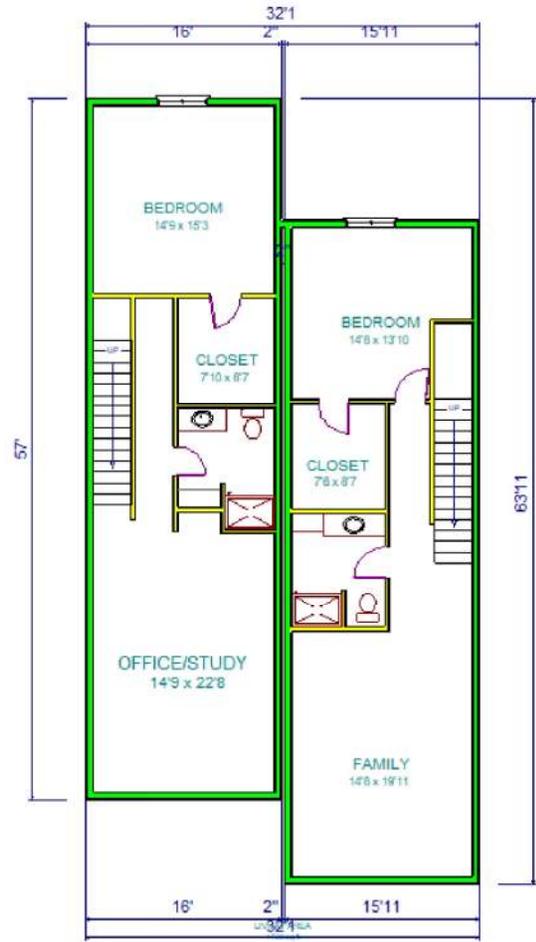
Building Plans - First Floor
Submitted with Appeal



Building Plans - Second Floor
Submitted with Appeal



Picture (BMP,JPG,PNG)...



Kim Lee

From: Kim Lee <klee@bismarcknd.gov>
Sent: Monday, April 13, 2020 3:41 PM
To: [REDACTED]
Cc: Brady Blaskowski; Ben Ehreth
Subject: RE: Re[2]: Two unit house plan

Mr. Wetzel –

Please accept my apologies for a delayed response, but I was checking with others in the office before I provided you with a written response.

Based on the information submitted, we have determined that the proposed building on Lots 14 & 15, Block 4, SouthBay 5th Addition is a three-unit dwelling. As the R10 – Residential zoning district only allows one and two-family dwellings, this building would not be permitted in this location.

Section 14-02-03 of the City Code of Ordinances (General Provisions and Definitions/ Definitions) defines a dwelling unit as, “a building or portion thereof providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.”

It is our opinion that the presence of three dwelling units is apparent in the building plans submitted. In making this determination, we also found that all of the following features, which would indicate a separate dwelling unit, are present in each of the three units:

1. Independent Living - The building or portion thereof is capable of being utilized for independent living and has complete and permanent provisions sufficient for living, sleeping, eating, cooking and sanitation;
2. Independent Access - The building or portion thereof has independent access to the exterior, either directly or through a separate garage or a common foyer or lobby;
3. Separate Sanitation Facilities - The building or portion thereof has separate sanitation facilities, including a full bathroom with a sink, toilet, bathtub and/or shower or plumbing rough-ins for a full bath or shower; and
4. Separate Eating and/or Cooking Facilities - The building or portion thereof has separate eating or cooking facilities, including a kitchen with at least a stove and sink, separate from the full bath or laundry sinks, or rough-ins for a stove and sink, such as a gas line and/or 220 electric outlet for a stove or a plumbing connection for a separate sink.

You have the right to appeal any interpretation or determination made by the Zoning Administrator or other administrative official to the City’s Board of Adjustment.

Please let me know if you have any questions, need any additional information, or if you would prefer this same information in a letter format.

Kim L. Lee, AICP | Planning Manager
City of Bismarck | Community Development Department
221 North 5th Street | PO Box 5503
Bismarck, ND 58506-5503
Office: 701.355.1840
Direct: 701.355.1846
Website: www.bismarcknd.gov
Facebook: www.facebook.com/bismarcknd.gov
Twitter: www.twitter.com/BismarckNDGov

This e-mail, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., may be confidential, or may contain confidential material. It is intended for use only by the person(s) to whom it is directed. If you are not the intended recipient and/or received it in error, you should (1) reply by e-mail to the sender; (2) delete this e-mail, including deletion of all associated text files from all storage locations including individual and network storage devices; and (3) refrain from disseminating or copying this communication. The media in which any electronic data files are transmitted can deteriorate over time and under various conditions. The City does not warrant the accuracy of any information contained in electronic data files transmitted by e-mail.

 please consider the environment before printing this e-mail

From: [REDACTED]
Sent: Wednesday, April 8, 2020 9:56 AM
To: Kim Lee <klee@bismarcknd.gov>
Subject: Re[2]: Two unit house plan

In your email you stated you would get back to me on March 26 or 27th. It has almost 2 weeks since your last email. In part this may be due to the COVID-19 but I understand all staff at the City is still working either in the office or at home.

I see the mayor's portfolio includes Community Development and I plan on copying him in on the communication I have had with your office regarding this project. I have spent a considerable amount of time and money to build this twinhome for our family. It is not a 3 unit.

I would appreciate a response and it seems your office is trying to find a reason to deny my proposed project.

On Thu, Mar 26, 2020 at 02:47 PM, Kim Lee <klee@bismarcknd.gov> wrote:

Dennis -

I received your email and will get back to you later today or tomorrow.

Kim

Sent from my iPad

On Mar 26, 2020, at 2:45 PM, [REDACTED] >
wrote:

I have attached two plans. The first plan should be similar to the one I gave Will with a courtyard in the front and back. The second plan has a bigger entrance area with a courtyard in the back. Both only have one common entrance with no doorway to one of the units. The one also has a closet in front that would make it almost impossible to add a separate

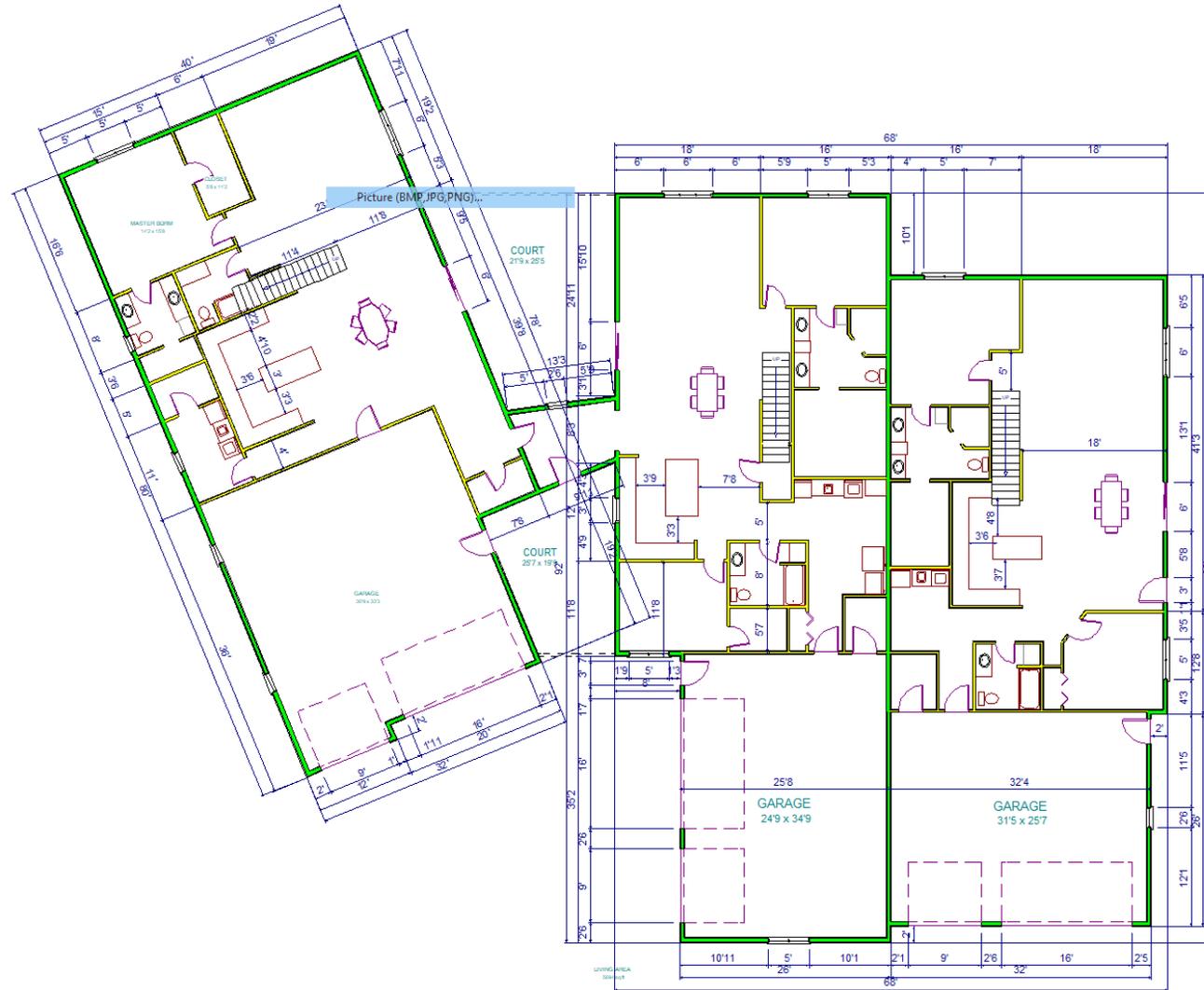
entrance. Both designs are basically the same square footage, with the exception of the bigger entrance.

Please send me a message to confirm you have received. I want to build this as two units with one entrance to the middle and left unit. This will have one address and the right unit will have a separate address.

<southbaybiggarageshorterfirstfloor.bmp>

<southbaybiggarageshorterfirstfloorbiggerentrance.bmp>

Original Building Plans - Version 1



ZONING INTERPRETATION - Definition of Dwelling Unit

Purpose

The purpose of this interpretation is to define what elements constitute a separate dwelling unit for purposes of compliance with limitations in the zoning ordinance on the number of dwelling units allowed by zoning district.

Definition

Section 14-02-03 of the City Code of Ordinances (General Provisions and Definitions/ Definitions) defines a dwelling unit as, “a building or portion thereof providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.”

Interpretation

Generally, the presence of a separate dwelling unit is apparent based on building plans or the use of a building or portion thereof by a separate household. However, if there is a question as to whether or not a building or portion thereof is a separate dwelling unit, the presence of all of the following features should be considered indicative of a separate dwelling unit:

1. Independent Living - The building or portion thereof is capable of being utilized for independent living and has complete and permanent provisions sufficient for living, sleeping, eating, cooking and sanitation;
2. Independent Access - The building or portion thereof has independent access to the exterior, either directly or through a separate garage or a common foyer or lobby;
3. Separate Sanitation Facilities - The building or portion thereof has separate sanitation facilities, including a full bathroom with a sink, toilet, bathtub and/or shower or plumbing rough-ins for a full bath or shower; and
4. Separate Eating and/or Cooking Facilities - The building or portion thereof has separate eating or cooking facilities, including a kitchen with at least a stove and sink, separate from the full bath or laundry sinks, or rough-ins for a stove and sink, such as a gas line and/or 220 electric outlet for a stove or a plumbing connection for a separate sink.

The following factors shall not be considered in determining whether a separate dwelling unit exists:

1. Utility connections – The configuration of water and sewer mains into the building shall not be considered. A building with a single water meter and single sewer connection may contain multiple dwelling units.
2. Addressing – The current or future address(es) shall not be considered. A building seeking or granted a single address may contain multiple dwelling units.
3. Intended tenure – The intention stated by the property owner for future occupation, whether or not rent would be collected, is not considered as a factor.

A building or portion thereof that meets the City’s definition of a dwelling unit and includes the above features will be considered a dwelling unit regardless of how it is labeled on the building plans.

04/09/2020

Kim L. Lee, AICP, Planning Manager

f. Site Plan. No community storage building or buildings shall be constructed until a site plan has been approved by the Zoning Administrator.

5. Additional Manufactured Home Requirements. All mobile and manufactured homes shall be installed in conformance with the requirements of Chapter 4-12 of the Code of Ordinances.

(Ord. 4756, 05-14-96; Ord. 4936, 09-08-98; Ord. 5728, 05-26-09; Ord. 6028, 01-28-14; Ord. 6235, 10-25-16; Ord. 6287, 10-24-17)

14-04-06. R10 Residential District. In any R10 residential district, the following regulations shall apply:

1. General description. The R10 residential district is established as a district in which the principal use of land is for single-family and two-family dwellings. For the R10 residential district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the construction or placement of and the continued use of the land for single-family and two-family dwellings on urban lots.

b. To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single-family and two-family dwellings in the district.

c. To encourage the discontinuation of existing uses that would not be permitted as new uses under the provisions of this ordinance.

d. To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences of those streets.

e. To discourage any use which because of its character or size would create requirements and costs for public services such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family and two-family dwellings.

2. Uses permitted. The following uses are permitted:

- a. Single-family dwelling.
- b. Two-family dwelling.
- c. Education group.
- d. Public recreation group.
- e. Row house. Attached single-family dwelling in groups of two (2).

1) Density. The maximum allowable density shall be ten (10) families per gross acre.

2) Lot area.

a) Lot and yard requirement regulations for row house, townhouse or zero lot line attached units. Each attached single-family dwelling hereafter erected shall conform to the following minimums:

Lot area in square feet--not less than 3,500 feet per unit;

Lot width of front building line--not less than 30 feet, provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than twenty-five (25) feet;

Width of each side yard in feet--not less than 6 feet, except 25 feet shall be maintained at corner lots.

Depth of rear yard in feet--not less than 20 feet.

3) Height regulations. The maximum height of any principal building shall be forty (40) feet.

4) Safety provisions. Row house, townhouse or zero lot line attached units shall have wall separations between each dwelling unit of at least a two-hour, fire-resistant wall which shall extend from the footing to and through the

roof at least thirty (30) inches except as may be allowed by the city building code pertaining to area separation walls.

5) Off-street parking. Off-street parking spaces shall be provided for each dwelling unit in compliance with Section 14-03-10 hereof.

6) Regulations Imposed on Overall Structure. The lot coverage requirements and the minimum front, side and rear yard setbacks shall be imposed on the overall structure rather than on each individual unit.

f. Family foster home for adults.

g. Family child care, when located in a detached single family dwelling.

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

a. Child care center.

b. Religious institution.

c. Accessory dwelling unit.

3. Density. The maximum allowable density is ten (10) families per gross acre.

4. Lot area. Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family or two-family dwelling and accessory buildings may be erected, provided said lot contains not less than five thousand (5,000) square feet.

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

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

7. Front yard. Each lot or parcel shall have a front yard for principal or accessory structures of not less than twenty-five (25) feet in depth, provided, however, that on a record lot corresponding to a plat recorded prior to 1979, the following setback standards apply:

a. Reference Lots. A sample of reference lots in the vicinity of the proposed activity are used as the basis for front yard setbacks. Reference lots shall be selected as follows:

1. Reference lots are the three (3) closest adjacent lots or parcels on either side of the proposed activity, for a total of six (6) reference lots.

2. Reference lots are on the same side of the same street.

3. Reference lots contain residential structures, irrespective of the orientation of the structure. Vacant lots or lots with non-residential structures are skipped over for the next closest lot or parcel.

4. Reference lots may be selected across local streets, but may not be selected across collector or arterial streets.

5. Reference lots must be in the same zoning district as the proposed activity.

6. If three (3) lots or parcels that comply with the rules of this section are not available on any side, a corresponding number of lots or parcels are selected on the opposite side of the proposed activity, so that a total number of six (6) reference lots are selected.

7. The zoning administrator may adjust the number of reference lots, if necessary to determine a sample representative of the context.

b. Contextual Setback. The required front yard for principal or accessory structures shall be the median of all existing front yards measured from reference lots, plus or minus three (3) feet, but no less than the shortest front yard setback or more than the longest front yard setback measured from all reference lots.

c. Garage Exception. Notwithstanding the requirements of this section, no front face of a garage or vehicle storage unit shall be closer than twenty (20) feet from a right-of-way line to allow an additional parking spot in front of the garage without encroaching into the right-of-way.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. Each side yard shall be no less than six (6) feet in width. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width.

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

10. Height limits. No single-family dwelling and no two-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. No accessory buildings shall exceed twenty-five (25) feet in height.

(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4610, 05-24-94; Ord. 4649, 12-06-94; Ord. 4703, 06-13-95; Ord. 4756, 05-14-96; Ord. 4828, 03-25-97; Ord. 4991, 06-22-99; Ord. 5027, 02-08-00; Ord. 5666, 05-27-08; Ord. 5958, 03-26-13; Ord. 6040, 04-22-14; Ord. 6176, 11-24-15; Ord. 6218, 07-26-16; Ord. 6287, 10-24-17; Ord. 6361, 01-22-19)

14-04-07. RM Residential District. In any RM residential district, the following regulations shall apply:

1. General description. The RM residential district is established as a district in which the principal use of land is for multifamily dwellings and similar high density residential development. For the RM residential district, in promoting the general purposes of this title, the specific intent of this section is:

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
May 7, 2020**

The Bismarck Board of Adjustment met on May 7, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Due to ongoing public health concerns related to COVID-19, the meeting was held via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

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 March 5, 2020 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Janssen and seconded by Mr. Seifert to approve the minutes of the March 5, 2020 meeting, as presented. With Board Members Clark, Janssen, Marback, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-03-05(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 (231 WEST AVENUE C)

Chair Marback stated the applicants, 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 to be located on the East 39.5 feet of Lot 9, Block 7, Northern Pacific Addition (231 West Avenue C).

Ms. Wollmuth explained that the zoning ordinance makes provisions for minimum lot size, minimum lot width, and allowed uses for each zoning district and the proposed variance is located within the R5 – Residential zoning district and within a subdivision that was platted prior to 1953. She said 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.

Ms. Wollmuth went on to explain that 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. She said the lot width and existing use do not conform to the zoning ordinance and are considered to be pre-existing non-conformities. Ms. Wollmuth further explained that 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.

Ms. Wollmuth said the applicant is proposing to demolish the existing 400 square foot accessory building, constructed in 1944 and located zero feet from side yard setback along the east property line, and construct a new 840 square foot accessory building in the same location. She added that 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. Ms. Wollmuth closed by saying 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.

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 rebuilding a garage the same size as the one that is to be demolished would be grandfathered in.

Ms. Wollmuth said adding on to the existing garage would be permitted but the existing garage is to be demolished, so the owner would have to adhere to the requirements of the ordinance.

Mr. Janssen asked if a new building could be built on the same foundation as the existing garage, but at a taller height.

Ms. Wollmuth said the ordinance would not allow that, as the building is proposed to be demolished.

Mr. Wohl said the owner owns the adjacent property as well and asked what impact there could be on the adjacent property if the new garage on this property is built directly on the property line. He asked if a new accessory building on the adjacent property would have to be built further away from their property line.

Mr. Blaskowski said the normal setback requirements would apply still on the adjacent property. He said building the proposed accessory building to the property line would require it to be fire rated construction, but the adjacent property would not have any additional ratings or setback requirements.

Mr. Wohl said the burden of the additional construction requirements then would fall on this property, not the adjacent property. Mr. Blaskowski said that is correct.

Chair Marback said it would be built up to the east property line. Mr. Blaskowski said that is correct.

Mr. Braus said the observed hardship with their request is of the three-foot setback from the side yard. He said they do offer off-street parking for the tenant of the property and moving the new garage further west would make access to the current parking area very difficult. He said they would lose approximately four or five feet of vehicle maneuverability.

Mr. Janssen said if there is two rental units on the property, how many vehicles might that populate.

Mr. Braus said usually up to four vehicles. He said the garage can also be used when necessary, depending on the needs of the tenants.

Mr. Janssen asked why a parking slab could not just be added west of the existing garage. Mr. Braus said that would make the three perpendicular spaces harder to use so their off-street parking would be reduced.

Mr. Janssen said the four spaces there now seems to be adequate, a lot of the property is already being used for parking and now more is wanting to be added. He said he feels five or six vehicles parked on the property would be a lot.

Mr. Braus said they are the adjacent property owners to the east as well and they do use one of the spaces in the existing garage for personal use and adding on would open up more space for them to store lawn items and other storage needs. He said moving the

garage back two feet would open up more perpendicular parking as well for guests if needed.

Mr. Hoff said then that the garage would be more for storage rather than actual parking.

Mr. Braus said one space in the proposed garage would be kept for parking and the rest would likely be for storage which is the main reason for wanting the extra square footage.

Chair Marback said the tenants cannot park in front of the garage and allow others to still access the parking area.

Mr. Braus said that is correct. He said there is a shared driveway to the parking area and they need to be able to turn around in the parking area to drive straight out rather than back down the slanted driveway and onto a curved roadway.

Chair Marback said that is a safety issue. Mr. Braus said yes, it is.

Mr. Hoff asked when the house was built. Mr. Braus said it was built in 1936.

Chair Marback opened the public hearing.

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

Ms. Clark said for a building that is 70 years old she feels this would be an improvement to the property and is consistent with how the property is being used now and also how the neighboring properties are used.

Mr. Wohl said this is not the minimum variance in order to seek relief if they are going to have the proposed building be bigger than the existing building for storage purposes. He said they can add onto their own property for that need.

Mr. Janssen said he is trying to see the hardship and with two-unit building on a single property and two non-conforming issues he feels the need can be accomplished with more surface parking and a simple storage shed. He said he understands this would bring a convenience, but he is struggling to see the request meet the hardship requirement.

Mr. Hoff said he agrees and he was ok with the request until he learned it is a storage need of the property owner whose resident is not he adjacent lot to the east and would rather see the owner adding a parking slab instead.

Ms. Clark said she considers the improvement running to the benefit of the property.

Chair Marback said he saw the garage and feels it has functioned for as long as it could have and either way the owner would need a variance of some kind for this location.

Mr. Hoff said the properties would have to be sold together in the future because of the shared access point.

Chair Marback said that is not necessarily true, that Mr. Braus likely did not buy the two properties at the same time and that there would be a shared use agreement to be continued if needed in the future. He said by not allowing the owners to construct this building they are not allowing them full use of their property.

Mr. Janssen asked why the building could not be turned or moved and configured differently in order to fit. He said they would lose some garden space but feels they do have other options here. He asked if it is now a matter of convenience or a hardship.

Ms. Combs asked specifically what the hardship is with this request.

Ms. Clark said regular use of the property without the granting of a variance would not be maximized.

MOTION: A motion was made by Ms. Clark to approve the variances 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) to reduce the required side yard setback from three (3) feet to zero (0) feet in order to construct an accessory building on an existing non-conforming lot with an existing non-conforming use to be located on the East 39'5 feet of Lot 9, Block 7, Northern Pacific First Addition (231 W Avenue C) based on the request being consistent with adjacent neighborhood uses and the location of the existing garage. The motion was seconded by Mr. Seifert and with Board Members Clark, Seifert and Marback 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

UPDATE REGARDING ZONING ORDINANCE TEXT AMENDMENT TO SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING)

Ms. Wollmuth said the Bismarck Planning and Zoning Commission approved the proposed amendments to the off-street parking and loading requirements on April 22nd and the Bismarck Board of City Commissioners will consider the changes on May 12th with the assumption a public hearing will be called for at their May 26th meeting. She said it would become effective at that time if approved.

Chair Marback asked what the status is of the two recently denied variances from parking requirements that were appealed.

Ms. Wollmuth said those requests were delayed due to the ongoing public health concerns related to COVID-19 and in addition to the proposed changes the applicants have decided to wait and see if the amendments are approved before proceeding with their appeal requests.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:31 p.m. to meet again on June 4, 2020.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair

DRAFT