



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

August 6, 2020

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
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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 on this agenda via email to planning@bismarcknd.gov. The comments will be sent to the Board of Adjustment members 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 planning@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 should self-screen for COVID-19 symptoms or potential exposure and, if unable to pass the screening protocol, will be expected to participate remotely in the meeting for the public's safety.

Some of the Board of Adjustment members may be attending this meeting remotely. The number of meeting participants attending in person in the Tom Baker Meeting Room, including the Board of Adjustment members, will be required to maintain social distancing.



1. Consider the minutes of the July 2, 2020 meeting of the Board of Adjustment.

PUBLIC HEARINGS

2. **Section 14-04-21.2(3)(d) of the City Code of Ordinances (DF – Downtown Fringe / Dimensional Standards – Front Yard Setback); Section 14-04-21.2(3)(f) of the City Code of Ordinances (DF – Downtown Fringe / Dimensional Standards – Rear Yard Setback); and Section 14-03-11(10)(e) of the City Code of Ordinances (Landscaping and Screening / Buffer Yard Standards)-** Lots 4-6, Block 16, Northern Pacific Addition | VAR2020-002

Owner / Applicant: Boutrous Group, LLP and 506 Properties, LLC

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

OTHER

3. **Other.** None.

ADJOURNMENT

4. **Adjournment.** The next regular meeting date is scheduled for September 3, 2020



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

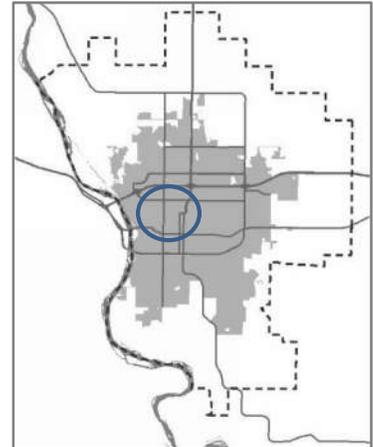
Agenda Item #2
August 6, 2020

Application for: Variance

TRAKiT Project ID: VAR2020-002

Project Summary

Title:	Lots 4-6, Block 16, Northern Pacific Addition (112-120 East Avenue A and 506-510 North 2 nd Street)
Status:	Board of Adjustment
Owner(s):	Boutrous Group, LLP and 506 Properties, LLC
Project Contact:	Tory Jackson, Jackson Law Firm PLLC
Location:	In central Bismarck, in the northwest quadrant of the intersection of East Avenue A and North 2 nd Street
Request:	Section 14-04-21.2(3)(d) of the City Code of Ordinances (DF – Downtown Fringe / Dimensional Standards – Front Yard Setback); Section 14-04-21.2(3)(f) of the City Code of Ordinances (DF – Downtown Fringe / Dimensional Standards – Rear Yard Setback); and Section 14-03-11(10)(e) of the City Code of Ordinances (Landscaping and Screening / Buffer Yard Standards)



Staff Analysis

Boutrous Group, LLP and 506 Properties, LLC are requesting variances from Sections 14-04-21.2(3)(d), 14-04-21.2(3)(f) and 14-03-11(10)(e) of the City Code of Ordinances to allow for the construction of five multi-family buildings and associated attached garages and one detached garage.

The proposed variance requests are located within the Conditional DF – Downtown Fringe zoning district. The zoning district requires development of this property be restricted to residential uses. The proposed multi-family development would comply with this restriction, and would also need to meet standard zoning requirements, including setbacks and buffer yards for the DF – Downtown Fringe zoning district. A copy of the conditional zoning identifying the restriction is attached.

These variances include a reduction of the required front yard setback for Buildings A, B, and C located along the south side of the buildings, adjacent to East Avenue A from 15 feet to 7 feet; and reduction of the front yard setback for Building C located along the east side of this building, adjacent to North 2nd Street

from 15 feet to 13 feet for the residential portion of Building C, and from 15 feet to 11 feet for the attached garage portion of Building C; a reduction of the required front yard setback for Building D located along the east side of the property, adjacent to North 2nd Street from 15 feet to 7 feet; a reduction of the required rear yard setback for the detached garage located along the west side of the property from 10 feet to 2 feet; and the reduction and elimination of portions of the required landscape buffer from 15 feet to between 0 feet and 8 feet located along the west side of the property.

The zoning ordinance requires a buffer yard be installed between multiple family residential use (3 or more units) and any commercial, industrial or institutional use in all zoning districts except when both properties are located within the Downtown Core (DC) and / or Downtown Fringe (DF) zoning districts. The proposed multi-family development is located with the DF – Downtown Core zoning district, and is adjacent to single family residential uses, immediately west of the property.

(continued)

Applicable Provision(s) of Zoning Ordinance

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

Section 14-04-21.2(3)(d) of the City Code of Ordinances (DF – Downtown Fringe / Dimension Standards – Front Yard) states, “There is no minimum front yard setback, unless the property is immediately adjacent to a residentially zoned property, in which case the minimum front yard setback shall be 15 feet. In no case shall a setback greater than 25 feet be allowed, and this area must be landscaped and/or incorporate streetscape elements. Except for driveways associated with single and two-family dwellings, off-street parking and loading areas shall not occupy the front yard setback area.” The proposed multi-family development is located immediately adjacent to residentially zoned property to the north (RM30 – Residential) and to the west (R5 – Residential) and according to the site plan submitted by the applicant Buildings A, B, and C would have a front yard setback of 7 feet adjacent to East Avenue A and the residential portion of Building C would have a front yard setback of 13 feet and the attached garage portion of Building C would have a front yard setback of 11 feet adjacent to North 2nd Street.

Section 14-04-21.2(3)(f) of the City Code of Ordinances states, “There is no minimum rear yard setback, unless the property is immediately adjacent to a residentially zoned property, in which case the minimum side yard setback shall be 10 feet.” The proposed multi-family development is located immediately adjacent to residentially zoned property to the north (RM30 – Residential) and to the west (R5 – Residential) and according to the site plan the proposed detached garage, which will serve Building D, would have a rear yard setback of 2 feet.

Section 14-03-10(11)(10)(e) of the City Code of ordinances requires a buffer yard of 15 feet with various planting materials or a buffer yard if 15 feet with 6-foot screening fence with reduced planting materials area required. According to the site plan submitted with the application, the applicant is proposing to eliminate and reduce the required landscape buffer from 15 feet to between 0 and 8

feet located along the west side of the property. The site plan also indicates various planting materials within the proposed reduce buffer yard which would be reviewed by the City Forester and the Director of Community Development.

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

Staff Recommendation

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

Attachments

1. Location Map
2. Aerial Map
3. Zoning Plan and Reference Map
4. Conditional DF – Downton Fringe zoning ordinance
5. Proposed Site Plan
6. Proposed Landscape Plan
7. Written Statement of Hardship

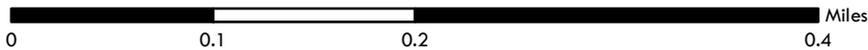
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

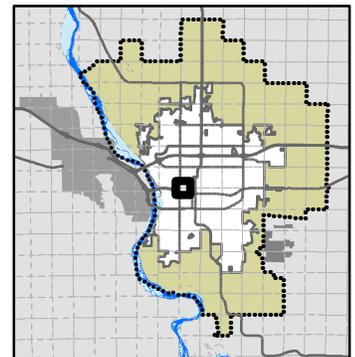
Lots 4-6, Block 16, Northern Pacific Addition

VAR2020-002



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
 Community Development Department
 Planning Division
 March 12, 2020 (HLB)

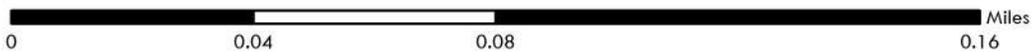
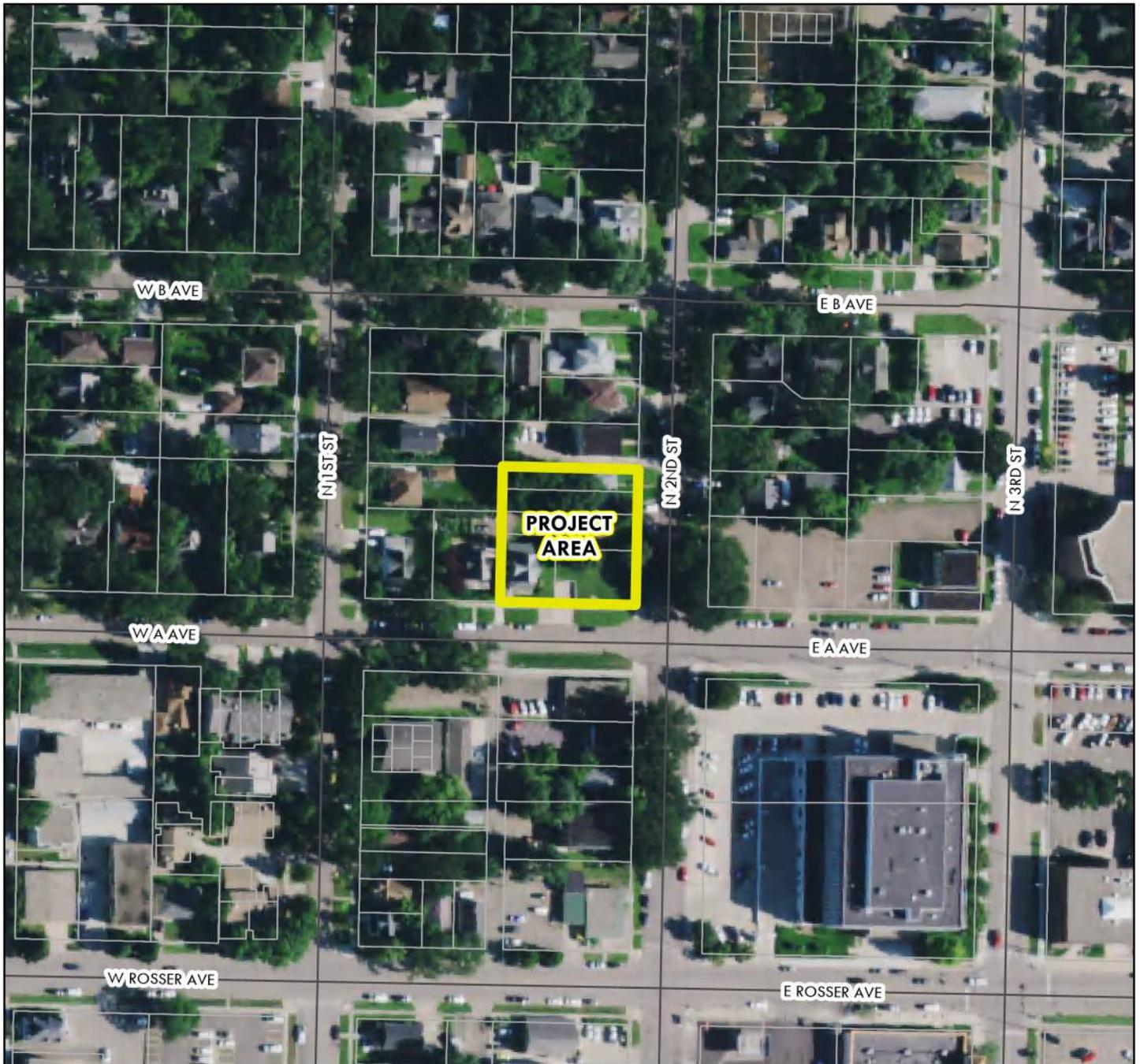
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Aerial Map

Lots 4-6, Block 16, Northern Pacific Addition

VAR2020-002

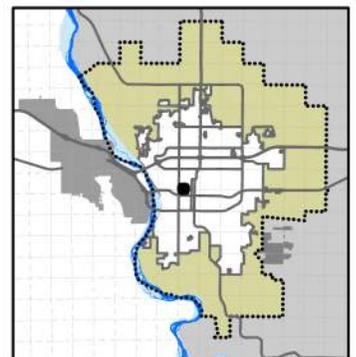


City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2019

City of Bismarck
Community Development Department
Planning Division
July 30, 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.





Zoning and Plan Reference Map

VAR2020-002

Lots 4-6, Block 16, Northern Pacific Addition

Zoning Districts

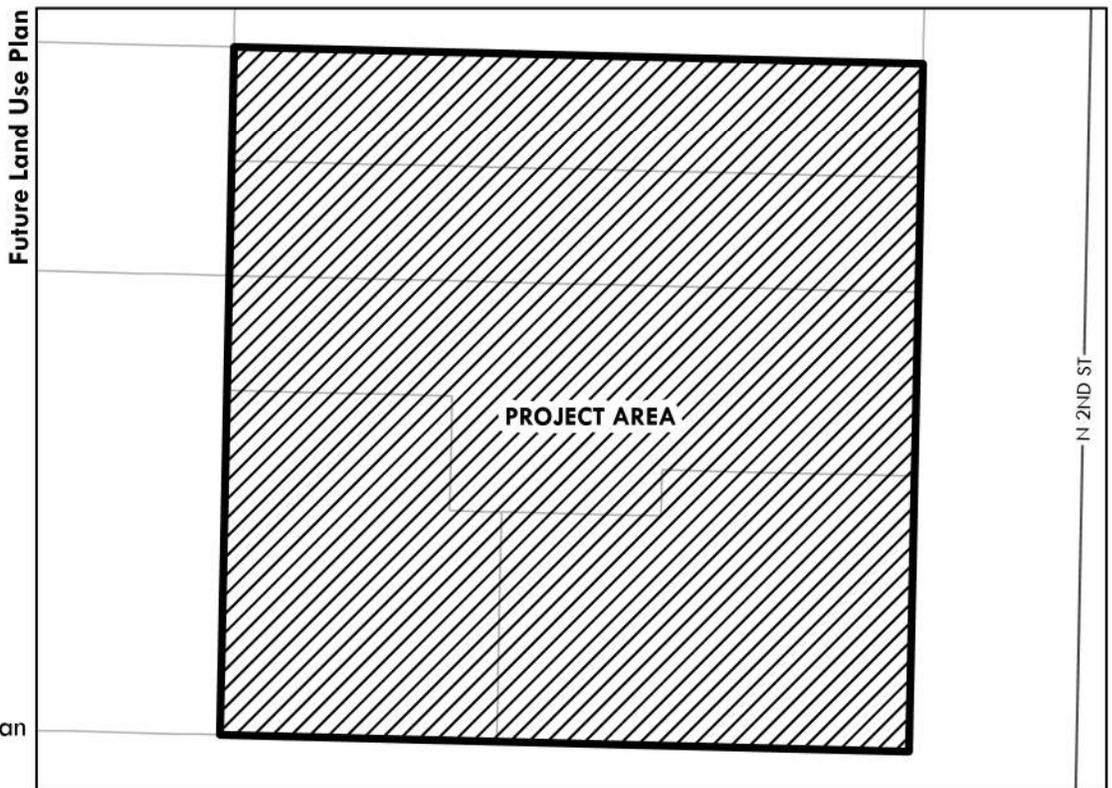
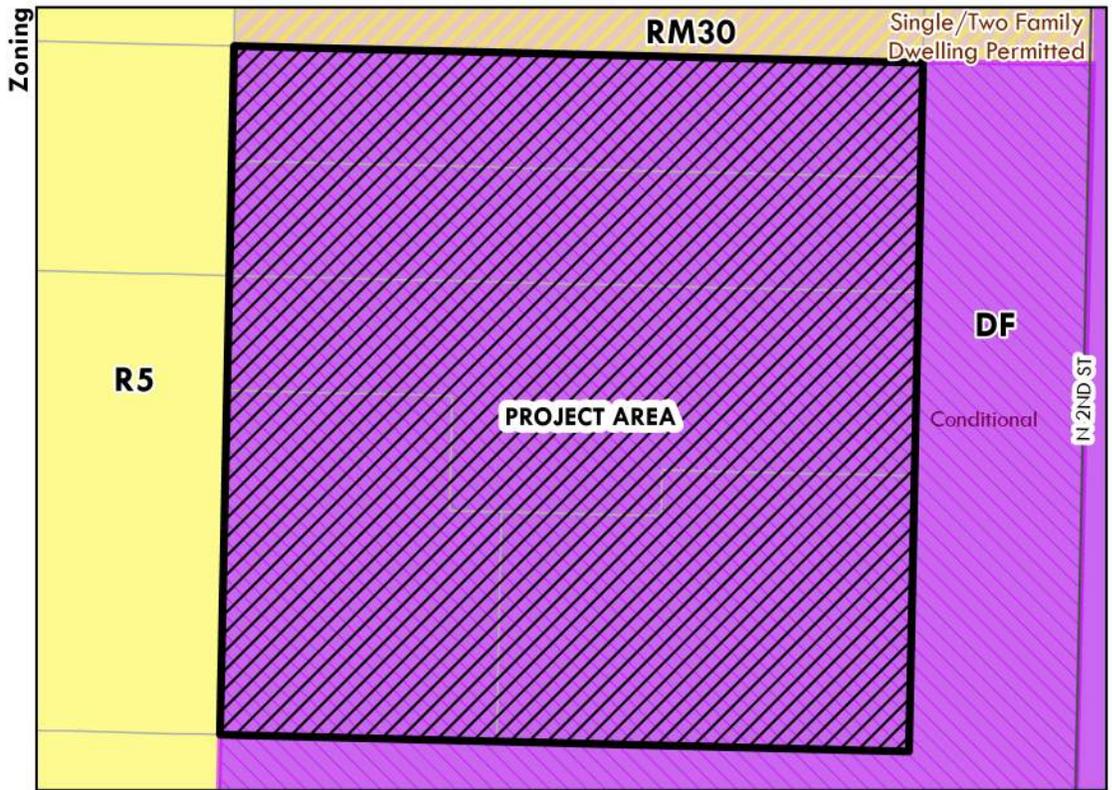
A	Agriculture
RR	Rural Residential
R5	Residential
RMH	Manufactured Home Residential
R10	Residential
RM	Residential Multifamily
RT	Residential (Offices)
HM	Health and Medical
CA	Commercial
CG	Commercial
MA	Industrial
MB	Industrial
PUD	Planned Unit Development
DC	Downtown Core
DF	Downtown Fringe

Future Land Use Plan

CONSRV	Conservation
BP	Business Park
C	Commercial
C/MU	Commercial/Mixed Use
CIVIC	Civic
HDR	High Density Residential
I	Industrial
LDR	Low Density Residential
MDR	Medium Density Residential
MDR-/MU	Medium Density Residential/Mixed Use
O/MU	Office/Mixed Use
RR-C	Clustered Rural Residential
RR	Standard Rural Residential
UR	Urban Reserve

Fringe Area Road Master Plan

- ● ● Future Arterial Road
- ■ ■ Future Collector Road



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City of Bismarck
 Community Development Dept.
 Planning Division
 July 30, 2020

ORDINANCE NO. 6178

<i>First Reading</i>	<u>November 10, 2015</u>
<i>Second Reading</i>	<u>November 24, 2015</u>
<i>Final Passage and Adoption</i>	<u>November 24, 2015</u>
<i>Publication Date</i>	<u>November 13 & 20, 2015</u>

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

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

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the RM30-Residential zoning district and included in the Conditional DF-Downtown Fringe zoning district:

Lots 4-6, Block 16, Northern Pacific Addition, with the following condition:

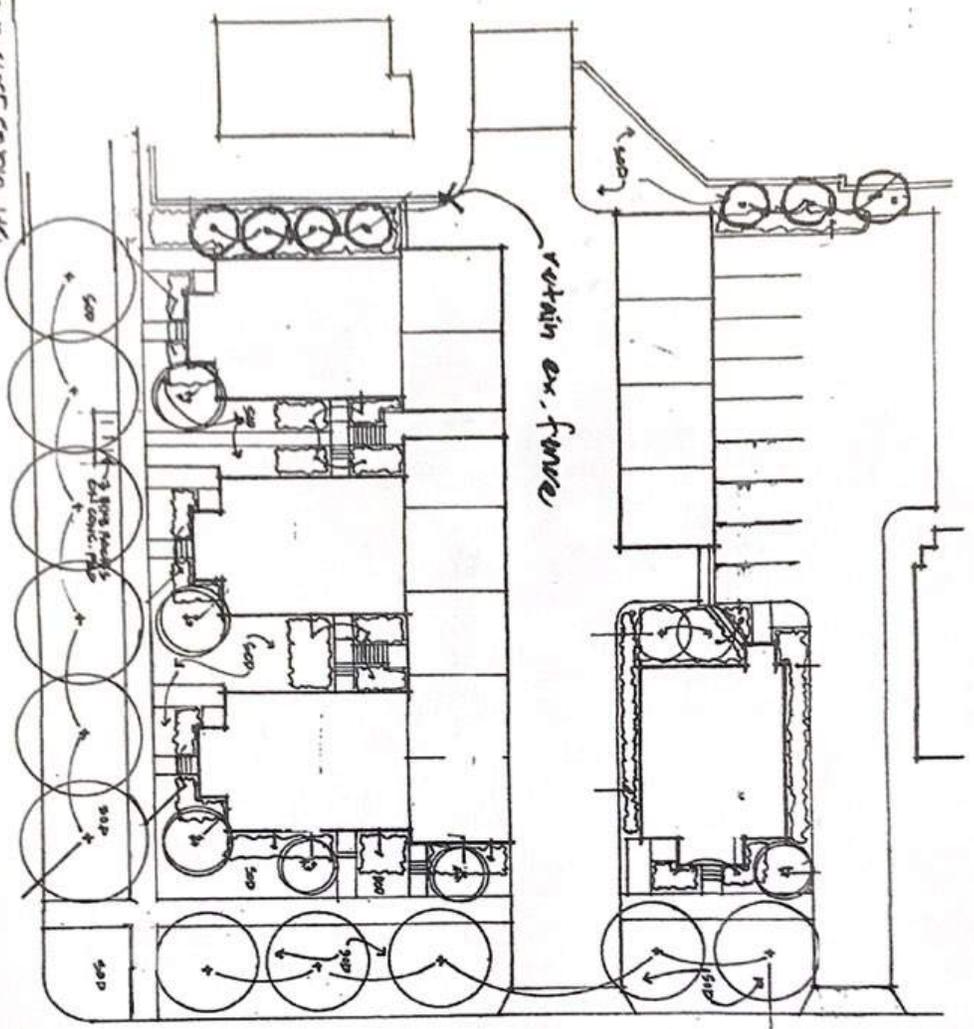
1. Future development would be restricted to a residential use.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

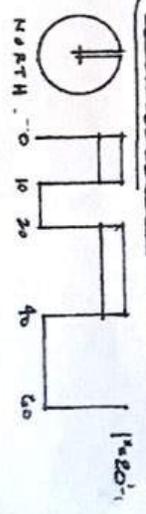
Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

BOB CUSP STUDIO, INC
12 MARCH 2020

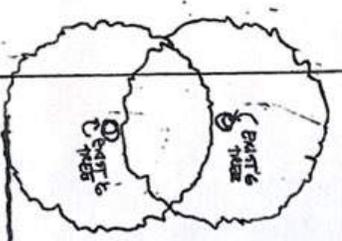
EAST AVE. A



N. 22nd ST



THE GROVE - BISMARCK N.D.
PLANNING PLAN





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>	Lots 4-6, Block 16, Northern Pacific Addition
Location of Property:	<input checked="" type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA
Type of Variance Requested:	Front Yard Setback and Buffer Yard
Applicable Zoning Ordinance: <small>(Chapter/Section)</small>	14-04-21.2 (3)(d) and (e); 14-03-11 (10)(b), (c) and (e)
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.)	
See attached sheets	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
See attached sheets	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
See attached sheets	

Describe how the strict application of the requirements of the Zoning Ordinance would limit use of the property.

The applicant seeks to develop a project that furthers the City's goals for infill, density and multi-family housing near downtown. However, unlike adjacent parcels, the property is very steep, with a change in elevation of 24 feet from the northwest corner of the property to the southeast corner. The steepness of the lot required careful engineering and design work to allow for a multi-family project with adequate off-street parking (even though the project is not required by the Zoning Ordinance to provide any off-street parking), and the location of the buildings and parking areas reflects the steepness of the lot. Topographic challenges make strict application of the Zoning Ordinance unworkable. The proposed layout of the buildings and parking areas represents the smallest footprint for the site that makes the project viable and furthers the City's goals for Downtown Fringe properties. As such, applicant is seeking a variance from the Zoning Ordinance requirement of a 15-foot Front Yard Setback (the front porches of the buildings will have a minimum setback of 7 feet, while the actual fronts of the buildings will have a 13-foot setback) and a variance from the Zoning Ordinance requirement for a 15-foot Buffer Yard (the proposed buffer yard will range from 0 feet at the drive lane on the west side of the site to as much as 7.72 feet elsewhere).

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

Strict application of the 15-foot Front Yard Setback and 15-foot Buffer Yard to a property as steep as this would not allow for a viable multi-family project that provides a transition from downtown to residential. By zoning the property as Downtown Fringe, the City has expressed a desire that the property provide a transition between downtown and adjacent zoning districts. The City, based on its own planning documents, also desires infill and additional housing near downtown. Achieving those goals is nearly impossible if the Zoning Ordinance is strictly applied without regard to topographic challenges.

In addition, the City has recognized that the 15-foot Buffer Yard requirement poses a particular hardship for Downtown Fringe properties, where different uses such as multi-family and single-family exist side-by-side and buffer yards have historically not been present. The City's Infill and Redevelopment Plan notes that implementing the 15-foot buffer in the Downtown Fringe "would be out of character and possibly prohibitive for any infill or redevelopment." That is particularly true on a steep lot such as this one.

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

Given the topographic challenges and neighborhood character, applicant is seeking minor variances to provide a subtle and aesthetically pleasing transition from Downtown Core and Downtown Fringe to residential. The Zoning Ordinance itself describes the purpose of the Downtown Fringe District "to provide a transitional area between the Downtown Core District and adjacent commercial and residential zoning districts." Strict application of the Zoning Ordinance does not provide for a reasonable transition from Downtown Core and Downtown

Fringe to residential. The property is the only portion of the block zoned Downtown Fringe, with the remaining lots zoned residential. If the property were not located adjacent to residential lots, there would be no setback requirement at all. Indeed, the applicant is working on a project directly across the street that has no setback requirements even though it also is adjacent to single-family homes. The only difference is that those single-family homes are also zoned Downtown Fringe. It makes little sense to impose no setback requirement on one project and immediately jump to a 15-foot setback requirement just across the street when both projects are adjacent to single-family homes.

Much of the property will still contain setbacks very close to what the Zoning Ordinance requires. There will be a 13-foot setback from the fronts of the buildings. The 7-foot setback only applies to the front porches, which is a design element that is in keeping with the neighborhood's character and provides for a walkable, community-oriented development. The project provides a subtle transition from city center to residential and complements the existing neighborhood.

In addition, given the City's own recognition that a 15-foot buffer yard is essentially impossible in many cases in the Downtown Fringe, applicant is seeking a variance for a more reasonable buffer yard that works for this particular lot. The adjacent properties already contain trees, shrubbery and fences along the property line, and the project site will as well, even with the reduced buffer yard.

The applicant has thoughtfully designed this project to fit within the topography of the property while also complementing the existing neighborhood. The project is designed to look like individual houses rather than one large apartment building with a more commercial feel. The buildings will feature gabled roof ends and porches, much like other houses in the area. The proposed buildings fit the context of the neighborhood and complement its aesthetic and historic qualities.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 2, 2020**

The Bismarck Board of Adjustment met on July 2, 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 also 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, Bruce Govig – Assistant City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chair Marback called for approval of the minutes of the May 7, 2020 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the May 7, 2020 meeting, as presented. With Board Members Clark, Janssen, Marback, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

APPEAL OF ZONING DETERMINATION – LOTS 14 AND 15, BLOCK 4, SOUTHBAY FIFTH ADDITION (4408 AND 4412 DOWNING STREET)

Ms. Wollmuth said Dennis Wetzel is appealing 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.

Ms. Wollmuth reviewed the proposed building plans for the structure as well as the applicable sections in the zoning ordinance, referring to dwelling units and permitted uses within the R10 – Residential zoning district, 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 within the proposed structure. Therefore, the Planning Manager / Zoning Administrator has determined that the proposed structure is a three-unit building.

Ms. Wollmuth also stated that as three-unit building is not permitted within the R10 – Residential zoning district, which allows single and two-family dwellings, it cannot be constructed as proposed by the applicant.

Dennis Wetzel, 6111 Apple Creek Drive, said he wants to build this twinhome and when looking for a lot to purchase for that purpose this was the biggest one he could find. He said he wants to move into town and the structure would not have a door leading to the left side unit. He said he would live in one side and sell the other half. He added that Planning staff is calling it a three-unit structure and the R10-Residential zoning district only allows one and two-unit rowhouses or townhouses, which require private entrances. He said this building would only have two private entrances.

Ms. Lee said the interpretation does identify access as being allowed through a garage, which the additional unit is proposed to have.

Mr. Wetzel said if he were to build a twinhome elsewhere in Bismarck everything would be required to be kept separate, including the permits. He said Ms. Lee referenced the utilities and he has always been required to have all utilities separate as well as the addresses. He then said there would not be a firewall on that side because one is only required between the two units.

Mr. Wohl asked why there is a goal of having an extra kitchen.

Mr. Wetzel said the stove can be removed and he had wanted a bar area there but he can eliminate it if he needs to. He said he would live in 4412, the southernmost unit, and it is designed and separated in a way that would require a major remodel in order to separate out the westernmost part of the building as a third unit.

Mr. Wohl said he makes some good points, but it does look like an additional unit; however, in some ways it would not be a far stretch to separate another unit if he decided to.

Mr. Wetzel said that would require a building permit review and he can take out the kitchen. He said the lot is large and he can modify the structure as needed.

Mr. Wohl asked if there is the intention of having it as a living area for other family members.

Mr. Wetzel said that could be a possibility as they get older and have caretaking needs.

Mr. Hoff asked if one unit could be made bigger and still have the same amount of garage space.

Mr. Wetzel said it would be a gabled roof and he would also like to have a kitchen behind the foyer with a gazebo while keeping the middle area private and protected.

Chair Marback asked if that would be the area labeled court in the back.

Mr. Wetzel said that is correct and added that he cannot detach any of the garages because of the restrictive covenants of the subdivision.

Mr. Janssen said his perspective is that this is a three-unit. He said there is not a twinhome with six garages and said all it would take is a partition to be built and a separate unit could be created. He said the lot is not zoned to handle this type of a use and he sees a three-unit dwelling with this proposal. He said if it was zoned correctly it could work, but the zoning is in place to help avoid anomalies such as this. He said this does not fit the area and there is just too much separation for it to be considered a twinhome.

Mr. Wohl said he sees the potential for this to cause problems; however, he is not sure the interpretation is correct either. He said there is not a private entrance on the one side with the exception of that in the garage. He said this could have some features of a single-family home and nobody would call it a two-unit dwelling. He said it does not meet the definition of a three-unit building, but it does look like one.

Mr. Wetzel provided building specifications from his title insurance company at this time and explained that the garage and the connecting point would have one fire wall and one roof each.

Mr. Wohl said a dwelling unit is defined is that for eating, sleeping, living and sanitation, but it is not defined anywhere that there is a maximum number of how many of each of those needs is allowed. He said they are getting hung up on the entrance points and the semantics of an entrance versus an exit are not one in the same.

Mr. Janssen said with the two layouts it is critical to realize it could be changed to a different dwelling size, which is not within the allowances of the R10-Residential zoning district. He said he is concerned this could be a trend tough to handle and, since staff made the determination, he would like to know if there is a similar situation anywhere else like this one.

Ms. Lee said there are some properties that are questionable and suspected by staff that they are aware of, but she does not want to point them out publicly. She said a staff discussion was had as to what to put in the written opinion to the owner that they could all agree on.

Mr. Wohl asked if there is a different opinion of if there could be a door or not to the supposed third unit or kitchen area.

Ms. Lee said based on it being three very similar floor plans and the impact of the units on each other it was felt that if the owner wanted to change that part into a third unit they could easily do so.

MOTION: A motion was made by Mr. Seifert to uphold the zoning determination made by staff and found that the proposed structure, located in the R10 – Residential zoning district, is a three-unit and is not permitted to be constructed in the R10 – Residential zoning district which allows for the construction of one and two-family dwelling units. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Janssen, and Seifert voting in favor of the motion and Board Members Wohl and Marback opposing the motion, the motion was approved and the appeal of the administrative determination was denied.

Chair Marback informed Mr. Wetzel that he could appeal the decision of the Board of Adjustment to the City Commission, and that staff would help him with that process.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:30 p.m. to meet again on August 6, 2020.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair