



Community Development Department

DATE: August 4, 2020

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Appeal of Board of Adjustment Decision – Lots 14 & 15, Block 4,
Southbay Fifth Addition

REQUEST

Dennis Wetzel is appealing the decision of the Board of Adjustment to uphold an administrative zoning determination made in regard to the proposed construction of a structure to be located on Lots 14 & 15, Block 4, Southbay Fifth Addition (4408 and 4412 Downing Street).

The property is located in south Bismarck, between West Burleigh Avenue and 48th Avenue SW along the west side of Downing Street Avenue B, and between North 7th Street and North 8th Street.

Please place this item on the August 11, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

On April 13, 2020, the Planning Manager, in her role as Zoning Administrator, determined that the residential building proposed by Mr. Wetzel was a three-unit building rather than a two-unit building and would not be permitted within the R10 – Residential zoning district.

In accordance with Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken), Mr. Wetzel appealed staff's administrative decision on June 8, 2020 and the appeal was forwarded to the Board of Adjustment for consideration.

The appeal was heard by the Board of Adjustment on July 2, 2020. Staff presented an overview of the determination made and the subsequent appeal. The Board members asked questions of both Mr. Wetzel and staff during their consideration of the appeal. At the conclusion of their discussion, the Board of Adjustment, on a 4-2 vote, voted to uphold staff's determination.

Mr. Wetzel was informed that he could appeal the decision of the Board of Adjustment to the Board of City Commissioner and such an appeal was filed on July 17, 2020.

RECOMMENDED CITY COMMISSION ACTION

Consider Mr. Wetzel's appeal of the Board of Adjustment's decision to uphold a determination made by the Planning Manager, in her role as Zoning Administrator, that the residential building proposed for construction on Lots 14 & 15, Block 4, Southbay Fifth Addition is a three-unit building and not allowed in the R10 – Residential zoning district.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim L. Lee, AICP | Planning Manager, 355-1846 or klee@bismarcknd.gov

Jenny Wollmuth, AICP, CFM | Planner, 355-1845 or jwollmuth@bismarcknd.gov

From: [Jenny Wollmuth](#)
To: [Jason Tomanek](#); [Kristine Kostuck](#)
Cc: [Kim Lee](#); [Hilary Balzum](#)
Subject: FW: Re[2]: APPL2020-001 4408 DOWNING ST
Date: Friday, July 17, 2020 1:05:17 PM

Jason –

Dennis Wetzel would like to appeal the Board of Adjustment's July 2, 2020 decision to uphold an administrative zoning determination made by Planning staff. In doing so the Board of Adjustment found that a structure Mr. Wetzel is proposing to construct at 4408 and 442 Downing Street in the R10 – Residential zoning district is a three-unit dwelling. A three-unit building is not a permitted use within the R10 – Residential zoning district which allows for the construction of one and two-family dwellings.

Per Mr. Wetzel's email below, please schedule this appeal for the August 11, 2020 meeting of the Bismarck City Commission.

Hilary – please set up an appeal project in TRAKiT.

Thanks,

Jenny Wollmuth, AICP, CFM
Planner | Planning Division
Community Development Department
701.355.1840-Department
701.355.1845- Direct
www.bismarcknd.gov

From: [mailto:]
Sent: Friday, July 17, 2020 12:58 PM
To: Jenny Wollmuth <jwollmuth@bismarcknd.gov>
Subject: Re[2]: APPL2020-001 4408 DOWNING ST

yes

On Fri, Jul 17, 2020 at 12:16 PM, Jenny Wollmuth <jwollmuth@bismarcknd.gov> wrote:

Dennis –

I am sure we can schedule you for the first meeting in August (8/11/20). Would you like to appeal?



STAFF MEMO

City of Bismarck
Community Development Department
Planning Division

Agenda Item #2

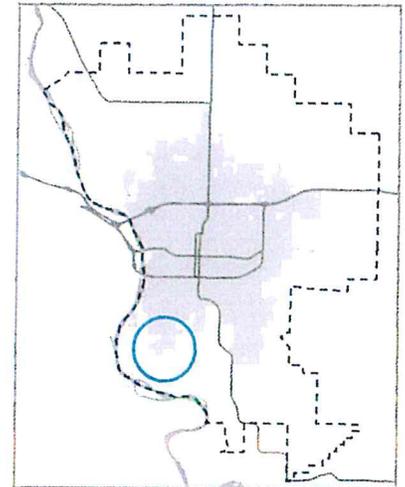
July 2, 2020

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

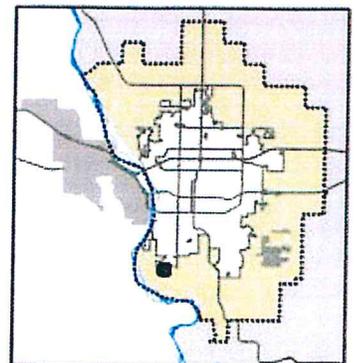
1. Location Map
2. Aerial Map
3. Appeal of Zoning Determination
4. Building Plans Submitted with Appeal
5. Zoning Determination Email
6. Original Building Plans – Version 1
7. Original Building Plans – Version 2
8. Zoning Interpretation –
Definition of a Dwelling Unit
9. Section 14-04-06 of the City Code of Ordinances (R10 Zoning District)

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

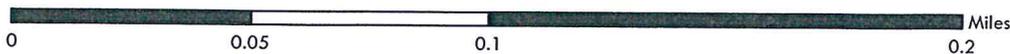


-  City Limits
-  Bismarck ETA Jurisdiction
-  County Outside ETA
-  Lots Pending Approval

Section, township, and range indicated in orange



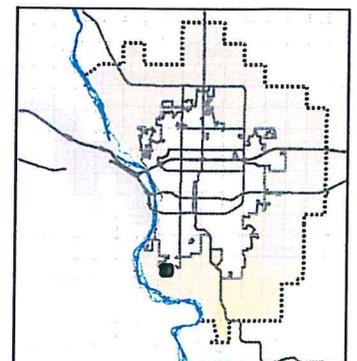
Lot 14 and Lot 15, Block 4, Southbay 5th Addition



 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.

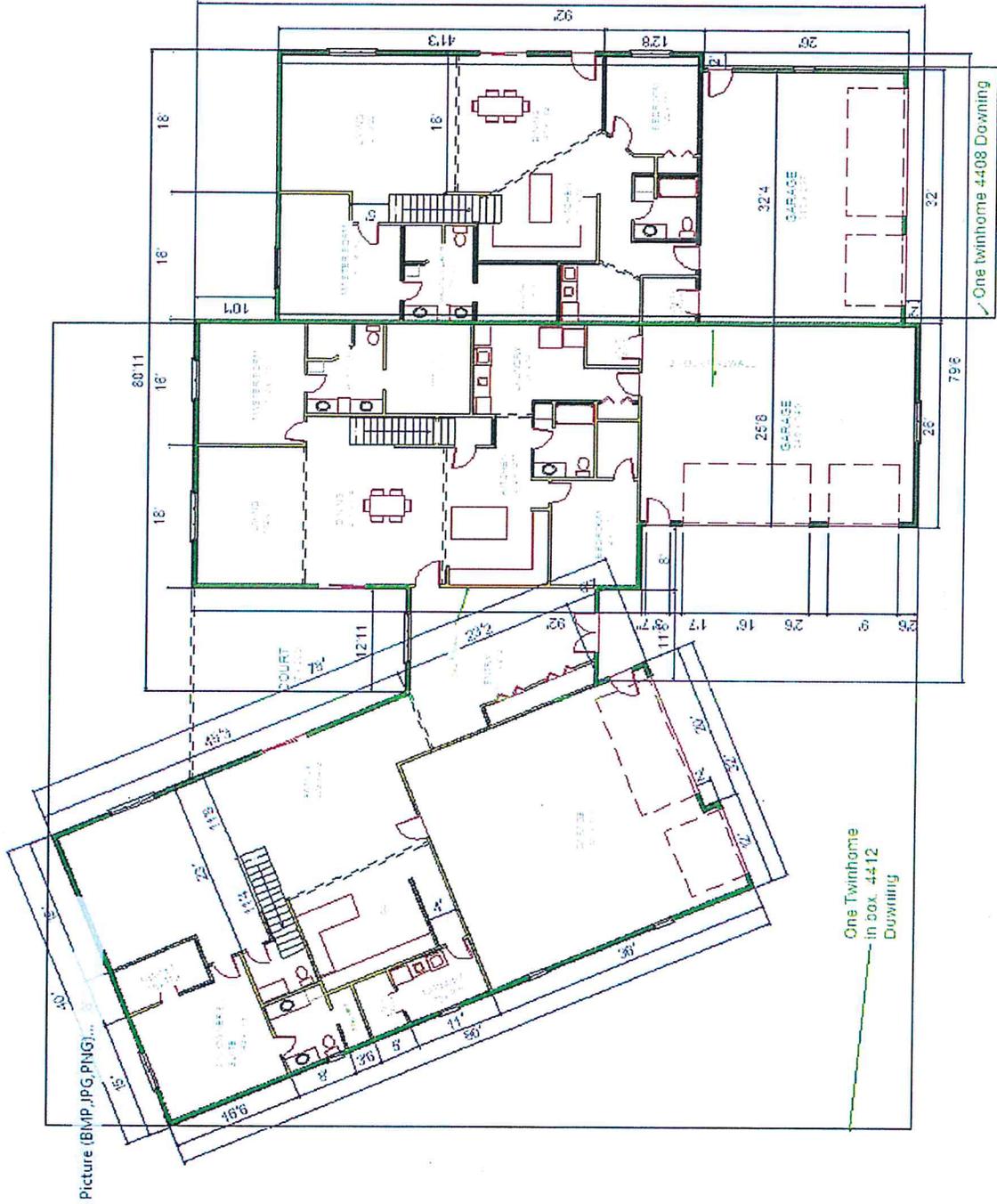
The project fits under the row house/townhouse definition. The definition states "each unit in a townhouse has a private front entrance". A row house states "each unit in a row house has private front and rear entrances". I disagree with item 2 in Kim Lee's letter and left townhome 4412, Downing is designed 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..

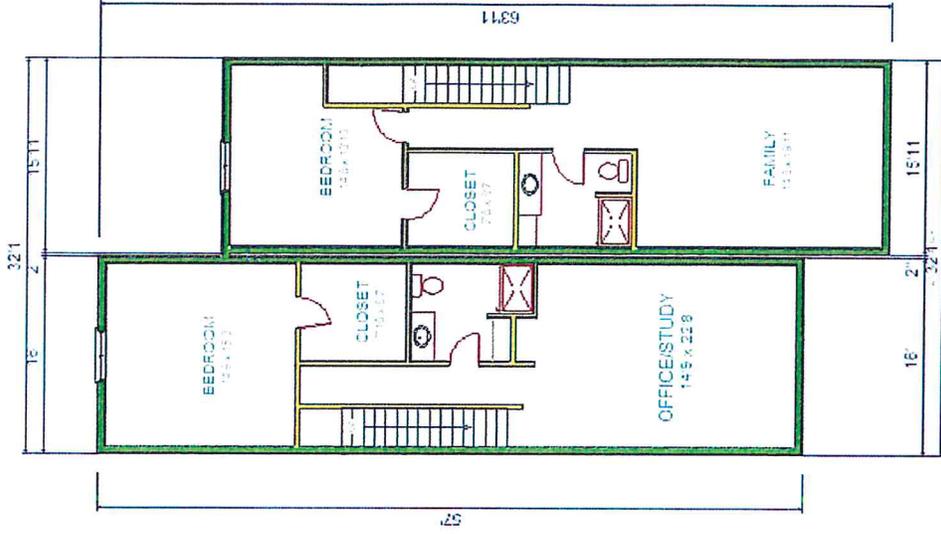
I have copied sections from an overview of the purpose of the Board of Adjustment, an email IO received from Kim Lee and section 14-04-06 regarding R10 residential district.

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.

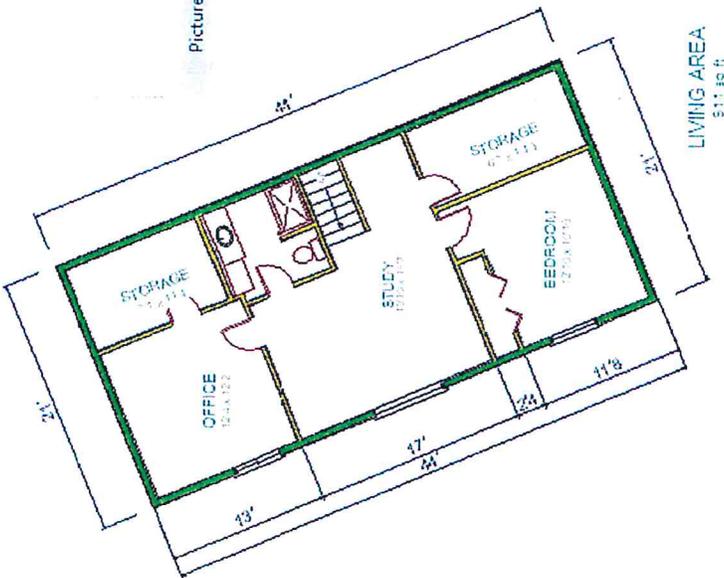
Building Plans - First Floor
Submitted with Appeal



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: dennisw@bis.midco.net
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

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 please consider the environment before printing this e-mail

From: dennisw@bis.midco.net [<mailto:dennisw@bis.midco.net>]

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, "dennisw@bis.midco.net" <dennisw@bis.midco.net> 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

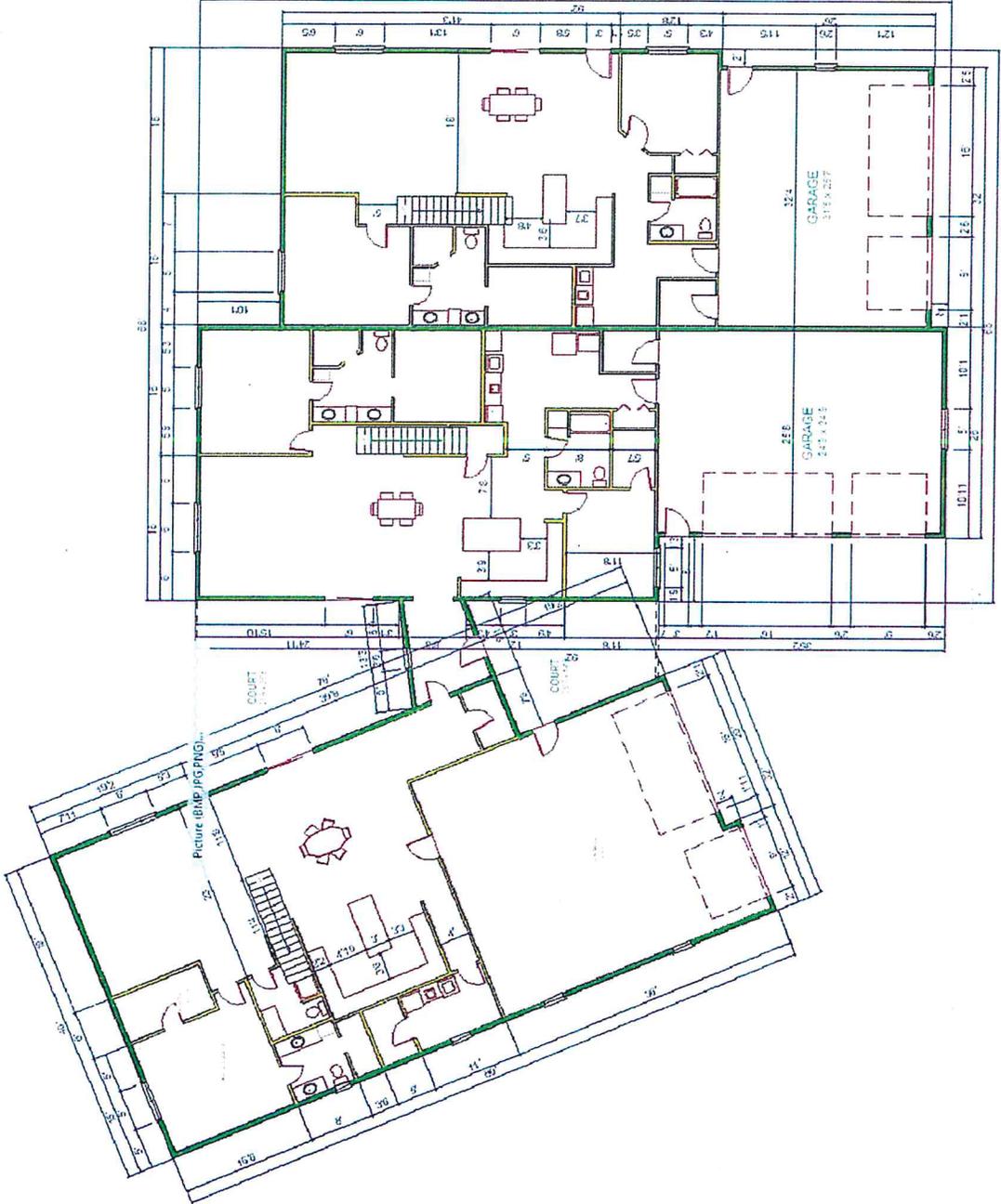
entrance. Both designs are basically the same square footage, with the exception of the bigger entrance.

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.

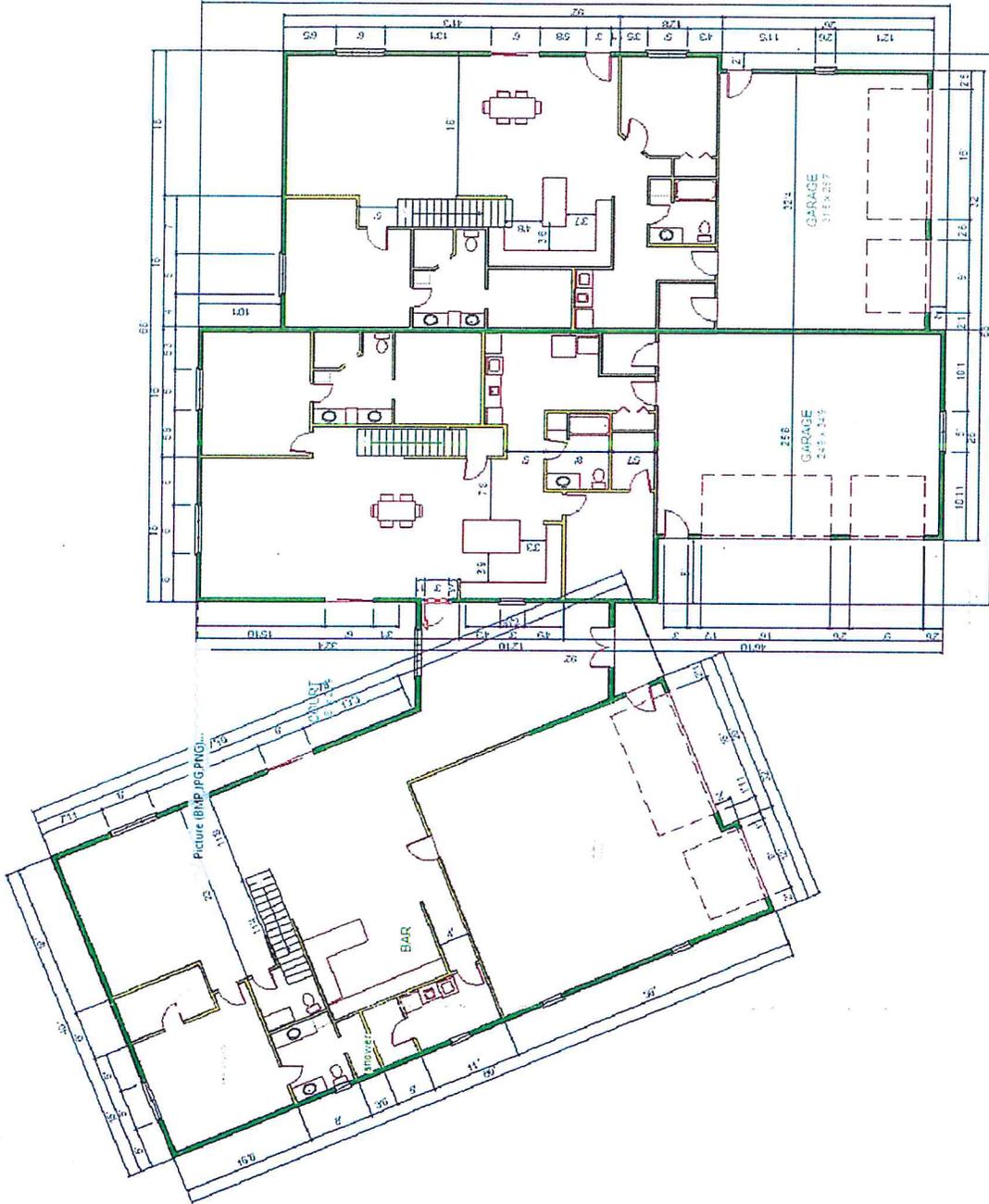
<southbaybiggarageshorterfirstfloor.bmp>

<southbaybiggarageshorterfirstfloorbiggerentrance.bmp>

Original Building Plans - Version 1



Original Building Plans - Version 2



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 EXCERPT
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, Jannelle Combs – City Attorney, Bruce Govig – Assistant City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

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.