



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

June 7, 2018

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
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MINUTES

1. Consider the minutes of the April 5, 2018 meeting of the Board of Adjustment.

REQUESTS / PUBLIC HEARING

2. **Variance from Section 14-04-03(9) of the City Code of Ordinances (R5 – Residential / Rear Yard)** – Lot 14, Block 1, High Meadows Eleventh Addition Replat (3760 High Meadows Circle) VAR2018-008

Owner / Applicant: Nicole and Jordan Frank

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

3. **Variance from Section 14-04-12(6) of the City Code of Ordinances (CG – Commercial / Front Yard)** – Auditor's Lot 8A Pinehurst Centre Unit C, Block 4, Nagel's 5th Addition (809 West Interstate Avenue Unit C) VAR2018-009

Owner / Applicant: Waterfront Investment Group, LLP

Board Action: ☐approve ☐continue ☐table ☐deny.....5

4. **Variance from Section 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Lot Coverage)** – Lot 8 and the North 9 feet of Lot 9, Block 10, Jennings Second Addition (1736 North 9th Street) VAR2018-006

Owner / Applicant: Kelvin Kossee

Board Action: ☐approve ☐continue ☐table ☐deny.....13



5. **Variance from Section 14-04-19(6) of the City Code of Ordinances (FP – Floodplain District) –**
Lot 4, Block 1, Wooded Acres Subdivision and Lot 3 less the west Lot 4, Block 1, Wooded Acres
Subdivision

Owner / Applicant: Gwen Hubbard

Board Action: ☐approve ☐continue ☐table ☐deny.....17

OTHER BUSINESS

6. **None.** No other business.

ADJOURNMENT

7. **Adjournment.** The next regular meeting date is scheduled for July 5, 2018



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

Agenda Item 2

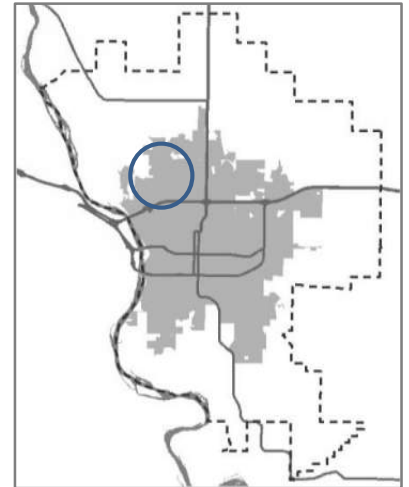
June 7, 2018

Application for: Variance

TRAKiT Project ID: VAR2018-008

Project Summary

Title:	Lot 14, Block 1, High Meadows Eleventh Addition Replat (3760 High Meadows Circle)
Status:	Board of Adjustment
Owner(s):	Nicole and Jordan Frank
Project Contact:	Nicole and Jordan Frank
Location:	In northwest Bismarck, west of North Washington Street, north of Arabian Avenue, south of Buckskin drive.
Request:	Variance from Section 14-04-03(9) of the City Code of Ordinances (R5 – Residential / Rear Yard)



Staff Analysis

Nicole and Jordan Frank are requesting a variance to reduce the required rear yard setback for their property to allow the construction of a 7' x 15' attached deck to their existing single-family home. The property is located within the R5 – Residential zoning district, which requires a rear yard setback of 20 feet. The home, built in 2015, was constructed up to the rear yard setback.

If approved as proposed, the addition of a deck would extend seven feet into the rear yard setback, reducing the setback from 20 feet to 13 feet.

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 14-04-03(9) of the City Code of Ordinances (R5 – Residential / Rear Yard) states that "Each lot

shall have a rear yard not less than twenty (20) feet in depth." According to the site plan submitted with the application, the proposed deck would extend seven feet into the required rear yard setback, reducing it from 20 feet to 13 feet.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within R5 – Residential zoning 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.

(continued)

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

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

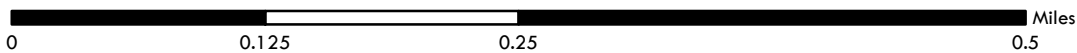
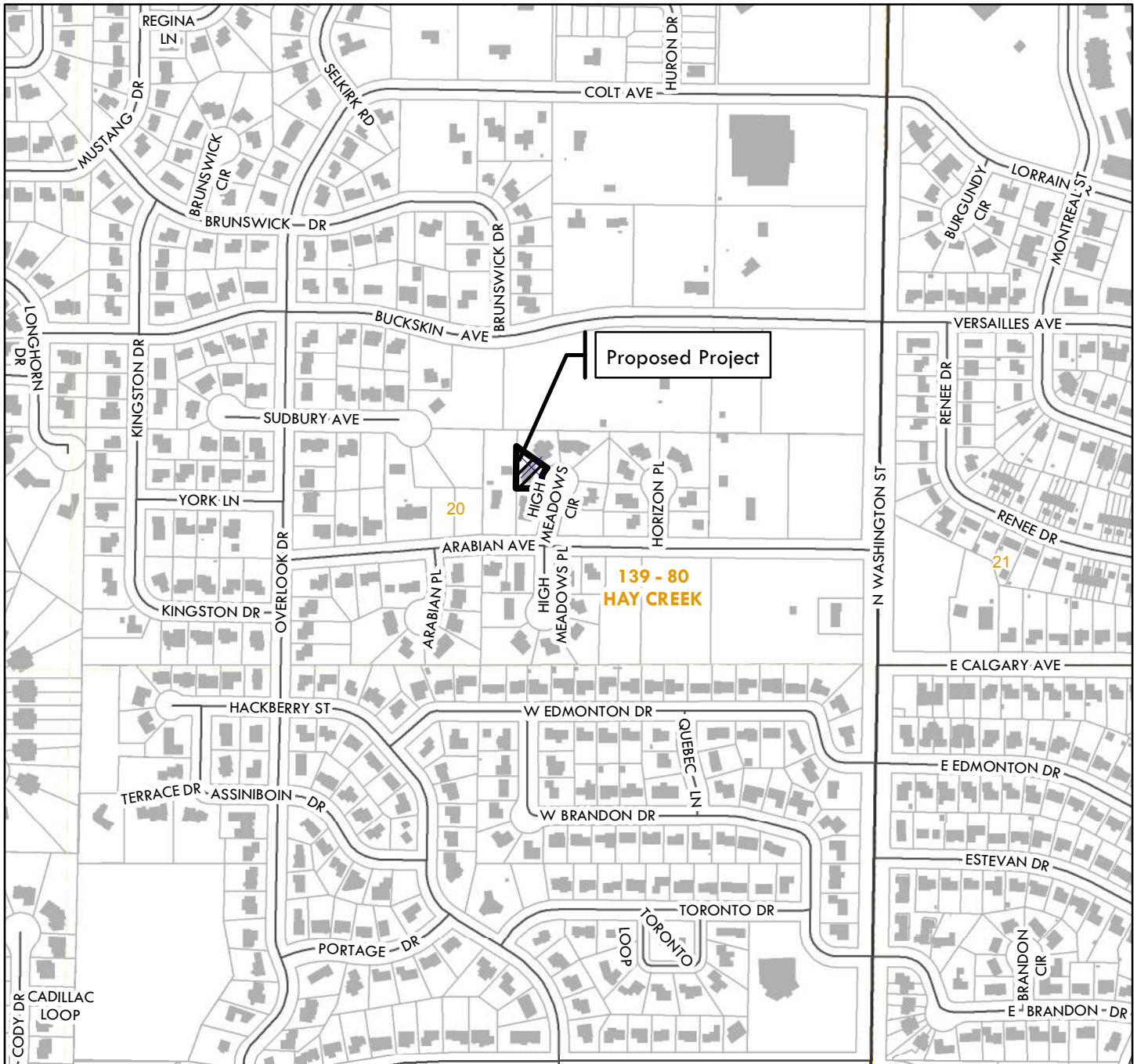
Staff report prepared by: Andrew Stromme, Planning Intern
Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Proposed Variance

VAR2018-008

Lot 14, Block 1, High Meadows Eleventh Replat



City Limits



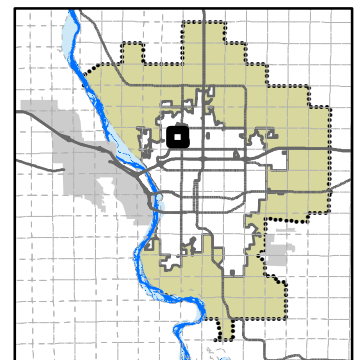
Bismarck ETA Jurisdiction

Section, township, and
range indicated in orange



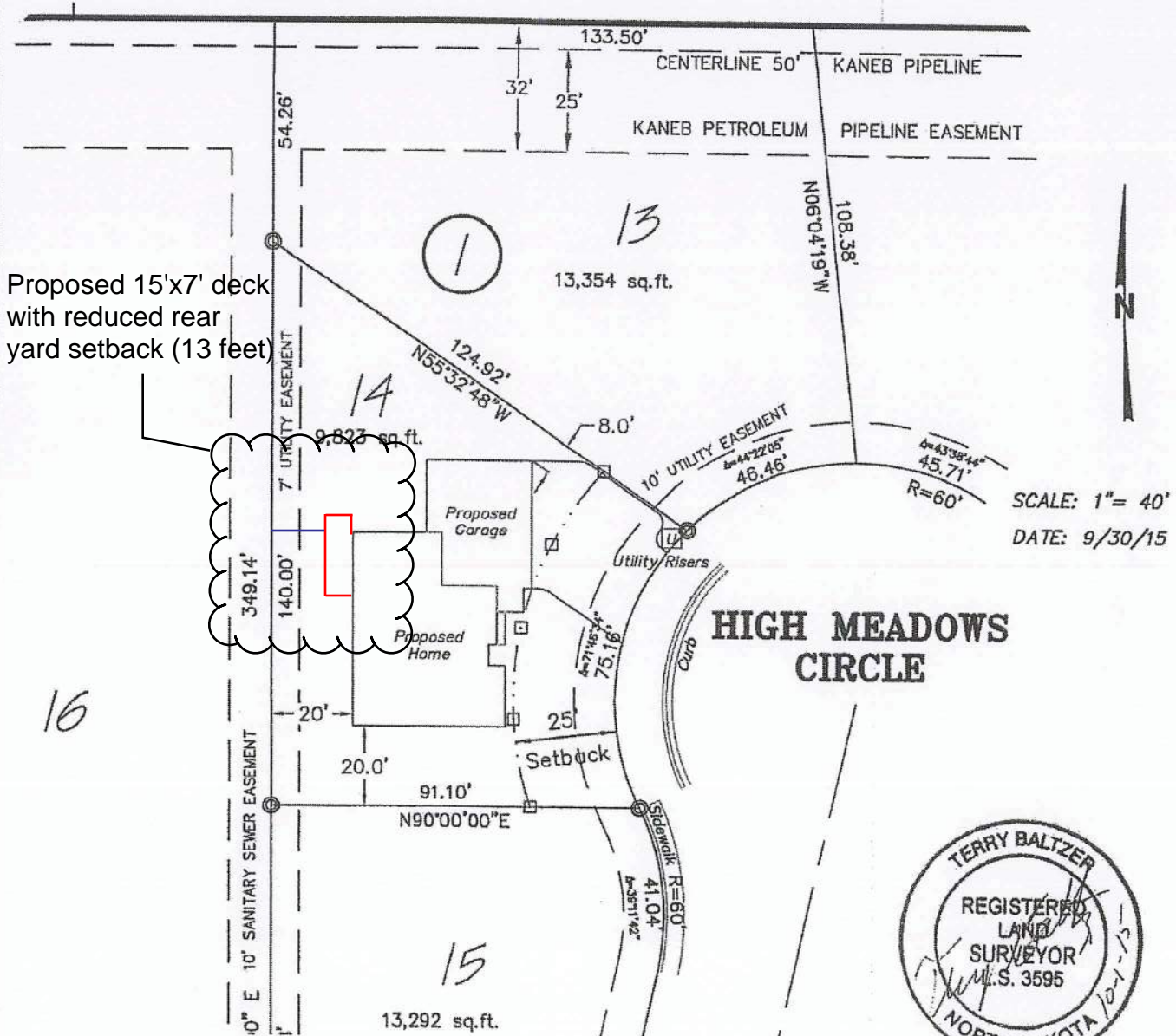
City of Bismarck
Community Development Department
Planning Division
May 11, 2018 (HLB)

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.



LOT SURVEY EXHIBIT

LOTS 14 BLOCK 1
 SUBDIVISION High Meadows 11th Replat
 ADDRESS 3760 High Meadows Circle
 BUILDER TK Homes



SCALE: 1" = 40'
 DATE: 9/30/15



- FOUND MONUMENT
- ⊙ SET MONUMENT
- BUILDING SETBACK OR NON-ACCESS STAKE



SWENSON, HAGEN & COMPANY P.C.
 909 Basin Avenue
 Bismarck, North Dakota 58504
 sheng@swensonhagen.com
 Phone (701) 223 - 2600
 Fax (701) 223 - 2606

Surveying
 Hydrology
 Land Planning
 Civil Engineering
 Landscape & Site Design
 Construction Management

NOTES

PLS

THE BUILDING SETBACK LINES SHOWN ARE TYPICAL. THERE MAY BE OTHER BUILDING RESTRICTIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING SETBACKS AND BUILDING DIMENSIONS. LOT DIMENSIONS ARE FROM PLAT. BUILDING AS SHOWN WAS FIELD STAKED.

FAXED OR EMAILED TO:
 BUILDER OR OWNER

DATED:



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

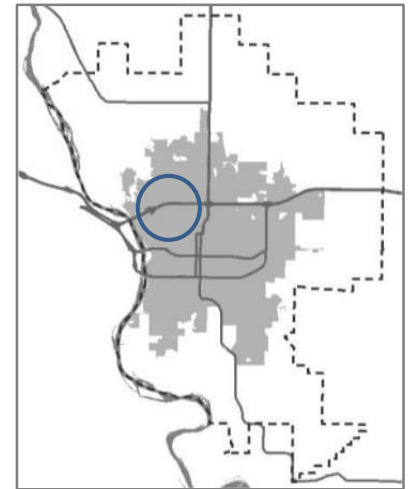
Agenda Item 3
June 7, 2018

Application for: Variance

TRAKiT Project ID: VAR2018-009

Project Summary

Title:	Auditor's Lot 8A Pinehurst Centre Unit C, Block 4, Nagel's 5 th Addition (809 West Interstate Avenue)
Status:	Board of Adjustment
Owner(s):	Waterfront Investment Group, LLP
Project Contact:	Nate Hacker, JLG Architects Kevin Kubisiak, Sanford Health
Location:	In northwest Bismarck, north of Interstate 94, east of West Century Avenue on the south side of West Interstate Avenue.
Request:	Variance from Section 14-04-12(6) of the City Code of Ordinances (CG – Commercial / Front Yard)



Staff Analysis

Waterfront Investment Group, LLP is requesting a variance to reduce the required front yard setback to allow for the construction of façade improvements that would extend the existing non-conforming depth of the overhang to the ground level on the north side of the existing structure, adjacent to West Interstate Avenue. The property is located within the CG – Commercial zoning district, which requires a front yard setback of 15 feet.

The existing building was constructed in 2006. The required 15 foot front yard setback was indicated on the building permit. A copy of the permit is attached. However, when gathering information for the construction of the proposed overhang and façade improvements it was discovered that the building was not constructed 15 feet from the front property line adjacent to West Interstate Avenue. The existing building overhang extends five and a half feet into the front yard setback on the northeast side of the building, reducing the front yard to nine and a half feet on this portion of the site. The proposed improvements would not extend further into the front yard than the existing overhang.

If approved as proposed, the proposed improvements would extend six feet into the front yard setback,

reducing the front yard setback from 15 feet to nine feet along the north side of the existing building adjacent to West Interstate Avenue.

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 14-04-12(6) of the City Code of Ordinances (CG – Commercial /Front Yard) requires that "A fifteen (15) foot front yard shall be required of any building in a CG commercial district except that all structures located on principal arterials shall have a fifty (50) foot front yard. Buildings located on the following principal arterials shall be exempt from the fifty (50) foot front yard requirement: Main Avenue west of 26th Street; State Street between Divide Avenue and Interstate 94; and 7th and 9th Streets between Bismarck Expressway and Boulevard Avenue." West Interstate Avenue is not considered a principal arterial roadway. According to the site plan submitted with the application the proposed overhang and façade

(continued)

improvements would project six feet into the required front yard setback reducing the setback from 15 feet to nine feet.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within CG - Commercial zoning 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.

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Site plan
3. Written Statement of Hardship
4. Original Building Permit

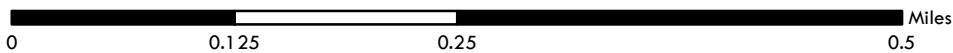
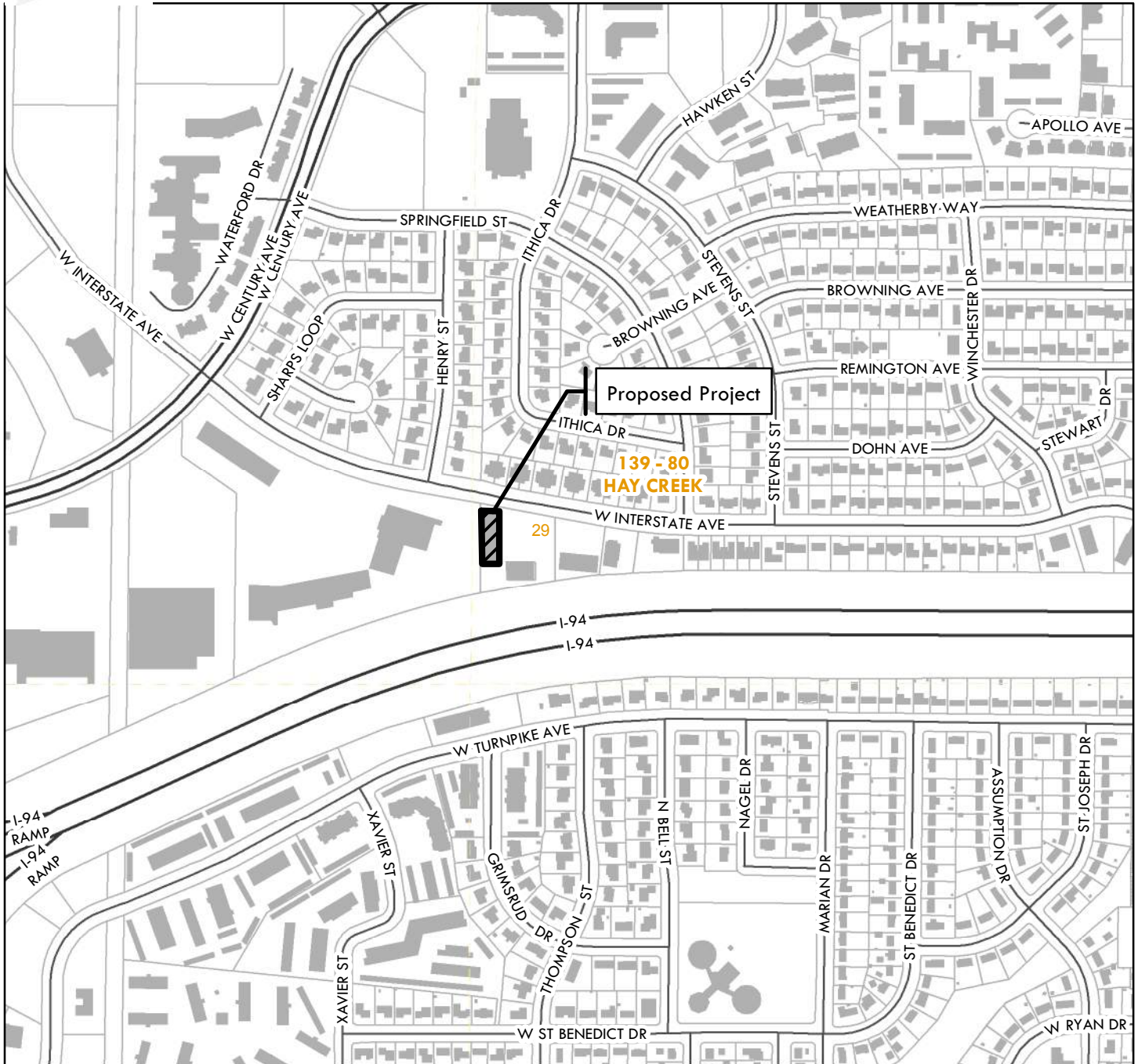
Staff report prepared by: Andrew Stromme, Planning Intern
Jenny Wollmuth, AICP, CFM, Planner
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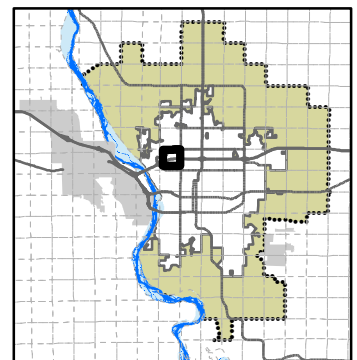
Proposed Variance

VAR2018-009

Auditor's Lot 8A Pinehurst Centre Unit A, Block 4, Nagel's 5th Addition (809 West Interstate Avenue)

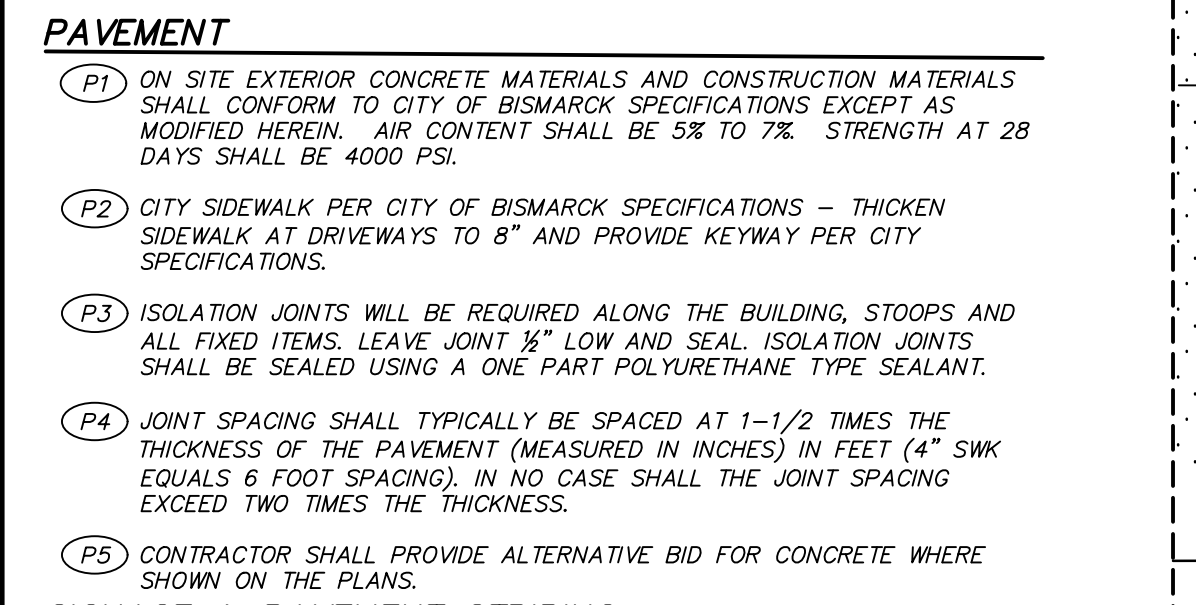


Section, township, and range indicated in orange



City of Bismarck
Community Development Department
Planning Division
May 31, 2018 (HLB)

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- (P1) ON SITE EXISTING CONCRETE MATERIALS AND CONSTRUCTION MATERIALS SHALL CONFORM TO CITY OF BISMARCK SPECIFICATIONS EXCEPT AS MODIFIED HEREIN. AIR CONTENT SHALL BE 5% TO 7%. STRENGTH AT 28 DAYS SHALL BE 4000 PSI.
- (P2) CITY SIDEWALK PER CITY OF BISMARCK SPECIFICATIONS - THICKEN SIDEWALK AT DRIVEWAYS TO 8" AND PROVIDE KEYWAY PER CITY SPECIFICATIONS.
- (P3) ISOLATION JOINTS WILL BE REQUIRED ALONG THE BUILDING, STOOPS AND ALL FIXED ITEMS. LEAVE JOINT $\frac{1}{2}$ " LOW AND SEAL. ISOLATION JOINTS SHALL BE SEALED USING A ONE PART POLYURETHANE TYPE SEALANT.
- (P4) JOINT SPACING SHALL TYPICALLY BE SPACED AT 1-1/2 TIMES THE THICKNESS OF THE PAVEMENT (MEASURED IN INCHES) IN FEET (4" SWK EQUALS 6 FOOT SPACING). IN NO CASE SHALL THE JOINT SPACING EXCEED TWO TIMES THE THICKNESS.
- (P5) CONTRACTOR SHALL PROVIDE ALTERNATIVE BID FOR CONCRETE WHERE SHOWN ON THE PLANS.

§§§ ALL NON-ADA STRIPING SHALL BE 4" WIDE NON REFLECTORIZED PAINT MEETING THE REQUIREMENTS OF ASHTO M28 APPLIED AT A RATE OF 110 SQUARE FEET PER GALLON. COLOR SHALL BE YELLOW. TYPICAL FOR ALL STRIPING UNLESS OTHERWISE NOTED.

§§§ ADA STRIPING FOR LANES AND SYMBOLS SHALL BE BLUE PAINT MEETING THE REQUIREMENT OF AASHTO M28 APPLIED AT A RATE OF 110 SQUARE FEET PER GALLON. PAINT FACE AND TOP OF CURB (6" WIDE) IN FRONT OF ALL HANDICAP STALLS.

§§§ PROVIDE AND INSTALL ADA SIGNS SECURED TO BUILDING, COORDINATE EXACT LOCATION WITH TENANTS REPRESENTATIVE.

§§§ PROVIDE AND INSTALL SIGN SECURED TO BUILDING THAT INDICATES "VAN ACCESSIBLE". COORDINATE EXACT LOCATION WITH TENANTS REPRESENTATIVE.

11 TOPSOIL IS STOCKPILED ON SITE AND WILL BE PLACED FOR THE LANDSCAPE CONTRACTOR TO SPREAD AND FINISH GRADE AND PRITCHES. THE SITE NOT RECEIVING CONCRETE, CURB & GUTTER OTHER IMPROVEMENTS SHALL BE COVERED WITH A MINIMUM OF 6" OF TOPSOIL AND SEEDED ACCORDING TO SPECIFICATIONS.

12 TOPSOIL AND SOD SHALL BE PLACED AS SOON AS PRACTICAL TO MINIMIZE WIND AND WATER EROSION. BACKFILL BEHIND CURB AND GUTTERS AND SIDEWALK AS SOON AS REASONABLE TO PREVENT STANDING WATER AND PROTECT THE IMPROVEMENTS.

1. CLEAR AND GRUB SITE BEFORE PLACING SOD TO ENSURING THAT THE SITE IS IN A SMOOTH CONDITION WITH NO DEBRIS OR ROCKS LARGER THAN 2" IN DIAMETER.

2. FERTILIZE SOIL AFTER SOD PLACEMENT USING AN APPROPRIATE APPLICATION PROCESS. FERTILIZER SHALL BE 10-10-10 AND APPLIED AT A RATE OF 4 LBS. PER 1000 SQUARE FEET.

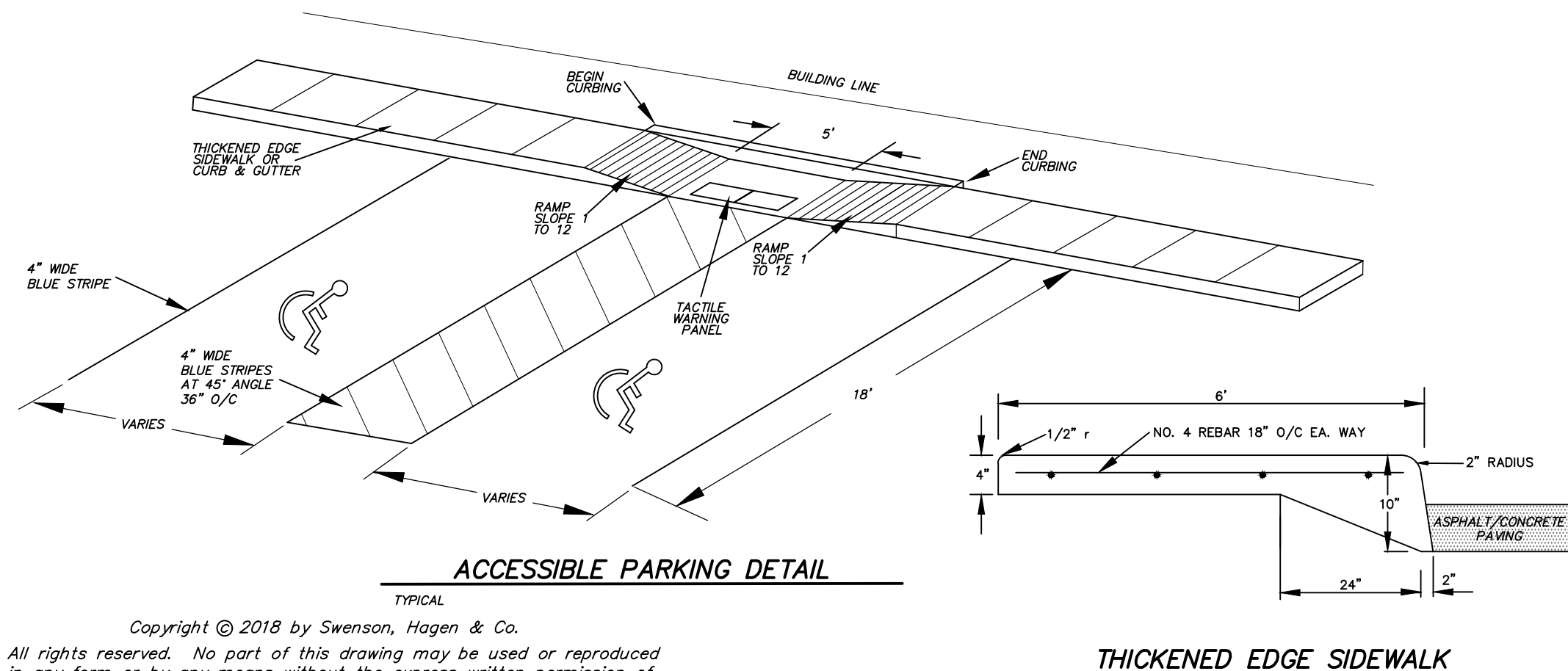
<p>The designs represented in these plans are in accordance with established practices of civil engineering. However, neither Swenson, Hagen & Co. nor its personnel can or do warranty these plans as constructed except in the specific cases where Swenson, Hagen & Co personnel inspect and control the physical construction on a full time basis</p>	<p>in accordance with generally accepted construction practices the contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal business hours.</p>
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In accordance with generally accepted construction practices the contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal business hours.

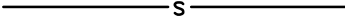

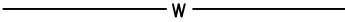
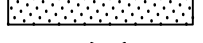













The location of existing underground utilities are shown in an approximate way only and have not been independently verified by the owner or its representatives. The Contractor shall determine the exact location of all existing utilities before commencing work, and agrees to be fully responsible for any and all damages which might be occasioned by the Contractor's failure to exactly locate and preserve any and all underground utilities.

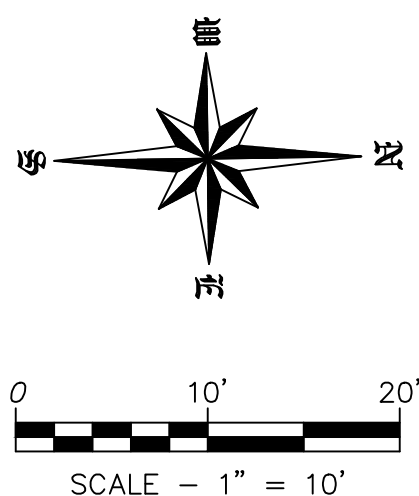
CALL BEFORE YOU DIG
NORTH DAKOTA
 UTILITIES UNDERGROUND LOCATION SERVICE
1-800-795-0555

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Swenson Hagen & Co.



LEGEND EXISTING ITEMS

	SANITARY SEWER
	STORM SEWER
	WATERMAIN
	CONCRETE
	HYDRANT
	VALVE
	RISER
	LIGHT
	UNDERGROUND ELECTRICAL
	UNDERGROUND GAS
	UNDERGROUND TELEPHONE
	UNDERGROUND FIBER
	UNDERGROUND CABLE TV
	TREE
	SIGN
	CONTOUR
	PROPOSED CONCRETE
	PROPOSED CONTOUR
	PROP LANDSCAPE EDGING



THIS DOCUMENT WAS ORIGINALLY
ISSUED AND SEALED BY JASON R.
PETRYSZYN, REGISTRATION NUMBER
PE-5345 ON APRIL 26, 2018 AND
THE ORIGINAL DOCUMENT IS
STORED AT THE OFFICE OF
SWENSON, HAGEN & CO. P.C.

REVISIONS	DATE

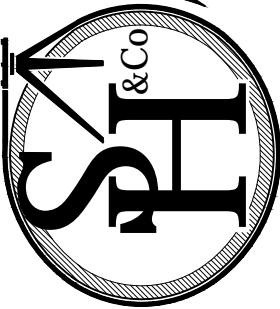
SITE PLAN

**AUDITOR'S LOT 8A, BLOCK 4
NAGEL'S 5TH ADDITION
BISMARCK, ND**

SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
Bismarck, North Dakota 58504
sheng@swensonhagen.com
Phone (701) 223 - 2600
Fax (701) 223 - 2606

Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site
Construction Management



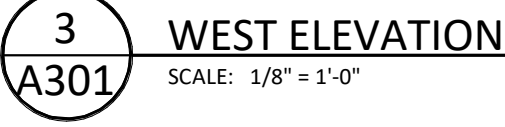
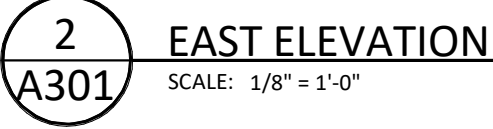
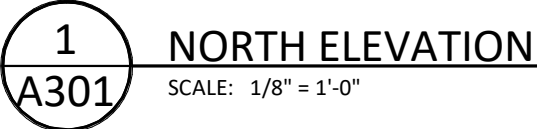
DRAWN BY: SK
CHECK BY: JP
DATE: 4-26-18
PROJ.#: _____
COMPUTER FILE: _____

SHEET
C3.0

REFER TO GLAZING ELEVATIONS FOR STOREFRONT AND CURTAINWALL ELEVATION

PATCH, REPAIR, AND PAINT EXISTING WALL AT ALL LOCATIONS WHERE DISTURBED BY NEW WORK.

BUILDING ELEVATIONS KEYNOTE	
KEYNOTE	DESCRIPTION
	LIGHTING FIXTURE; SEE ELECTRICAL
	SIGNAGE - PROVIDE BLOCKING AND POWER. SIGN WILL BE PROVIDED BY OWNER. FINAL LOCATION TO BE CONFIRMED BY OWNER
	PATCH AND REPAIR EXTERIOR WALL WHERE ALL SIGNS, KEYPAD ACCESS, ELECTRICAL, AND MECHANICAL EQUIPMENT IS REMOVED. SEE MEP DRAWINGS
	LIGHTING FIXTURE; SEE ELECTRICAL. PROVIDE STONE UTILITY ACCENT TRIM PIECE
	ACCESSIBLE PARKING SIGNAGE TO BE CENTERED ON WINDOW - SEE CIVIL
	ACCESSIBLE PARKING SIGNAGE TO BE CENTERED ON COLUMN - SEE CIVIL
	OWNER PROVIDED AND INSTALLED WINDOW GRAPHIC





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:
(Lot, Block, Addition/Subdivision)

Location of Property:

☐ City of Bismarck

☐ ETA

Type of Variance Requested:

Applicable Zoning Ordinance:
(Chapter/Section)

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.)

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

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

BIP010-01 10/10/2006		BUILDING PERMIT		Permit Num 2006-01529	
Property Address 809 W INTERSTATE AV		Location CITY OF BISMARCK		Phone 258-2070	
Special Flood Hazard NO		Elevation			
Architect					
Deeded Owner KELLER, RALPH					
Contractor CREATIVE CONSTRUCTION LLC		Contractor Num 28600			
Nondeeded Owner JANGULA STRIP MALL					
Contact Person CHAD		Phone Num 319-3446			
Desc Of Work CONSTRUCT 62'X 195' SHELL ONLY OF NEW STRIP MALL					
Property Number 860-004-075		Block 4			
Addition Name NAGEL'S 5TH					
Legal Desc 1. WEST 286.70' OF LOT 8		2.			
3.		4.			
Type Of Work 1 - NEW		Census Code 0407		Zoning Dist CG - COMMERCIAL	
Occupancy Group B - BUSINESS		Division		Easement 10' SOUTH, 7' WEST	
Num Living Units 0		Stories 1		Required Front Yard 15	
Size Eaves 0		Type Const II B		Required Side Yard 7.0	
Ownership Code 1 - PRIVATE				Required Rear Yard 10	
Previous Permit(s)		Current Permit		Total	
Area Main Bldg 0		12,090		12,090	
Garage Size 0		0		0	
Total Finished 0		0		0	
Total Basement Finished 0		0		0	
Area Acc Bldgs 0		0		0	
Num Off Street Parking 0		48		48	
Area Off Street Parking 0		7,776		7,776	
Total 0		19,866		19,866	
Cost Less Land 444,962.00					
Service Line Size		Water Mtr .75= 0 1=0 1.5=0 2=0 3=0		Water Agreement: NO Concrete Work: ASSESSABLE	
Charges:					
Permit Fee 1,796.45		Water Meter .00		Lot Survey .00	
Road Approach .00		Mobile Home .00			
				TOTAL 1,796.45 ***	
Payment Method Billed Num 6014402		ALL CHARGES ARE DUE AND PAYABLE WITHIN 30 DAYS			
		***** NOTICE *****			
		Separate permits are required for electrical, plumbing and mechanical (HVAC). Work under this permit must commence within 180 days of permit issuance and once commenced, work may not be suspended for more than 60 days. Permittee must comply with all codes and ordinances applicable to work. Issuance of this permit does not grant any authority to erect, modify or use any structure in violation of any code or ordinance. All required inspections, including a final inspection, must be requested by the Permittee. In consideration for connection to City utilities, Permittee agrees to pay all applicable utility fees and charges pursuant to City Ordinance. This Permit creates no warranties with regard to construction of code compliance. The inspections under this permit are for the benefit of the public and not the Permittee and the inspections do not create a duty to the Permittee, the owner or to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.			
		I hereby certify that I have read and examined this application and know the same to be true and correct.			
BILL AUGUSTADT Building Official		LAURA STROH Issued By		Permit Applicant	



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

Agenda Item 4

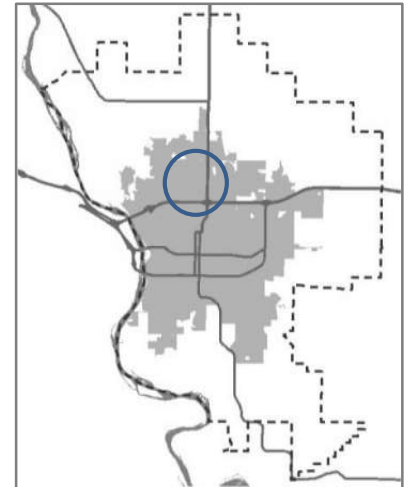
June 7, 2018

Application for: Variance

TRAKiT Project ID: VAR2018-006

Project Summary

Title:	Lot 8 and the North 9 feet of Lot 9, Block 10, Jennings Second Addition (1736 North 9 th Street)
Status:	Board of Adjustment
Owner(s):	Kelvin Kosse
Project Contact:	Kelvin Kosse
Location:	In central Bismarck, between East Capitol Avenue and East Divide Avenue, along the west side of North 9 th Street.
Request:	Variance from Section 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Rear Yard)



Staff Analysis

Kelvin Kosse is requesting a variance to allow the construction of a 936 square foot accessory building. This property is located within the R5 – Residential zoning district which requires a maximum lot coverage of 30 %. If approved as proposed, construction of the accessory building would increase the lot coverage by approximately 2.5%.

The applicant has indicated that the existing 120 square foot shed will be demolished and would not be included in the lot coverage. Lot coverage is determined by adding the ground area of all existing and proposed buildings, including the principal structure or house, covered decks and porches, and all attached and detached accessory buildings.

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 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Rear Yard) states, "The ground area occupied by the principal and accessory buildings shall not exceed thirty (30) percent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 (Off-street Parking and Loading) herof shall be added to the actual area of the buildings, if such space is not furnished within a building." According to the site plan submitted with the application the construction of the proposed accessory building would increase the lot coverage of this property from 30% to approximately 32.5%.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within R5 – Residential 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.

(continued)

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 and modifying them as necessary to support the decision of the Board.

Attachments

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

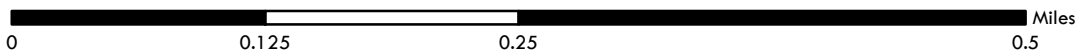
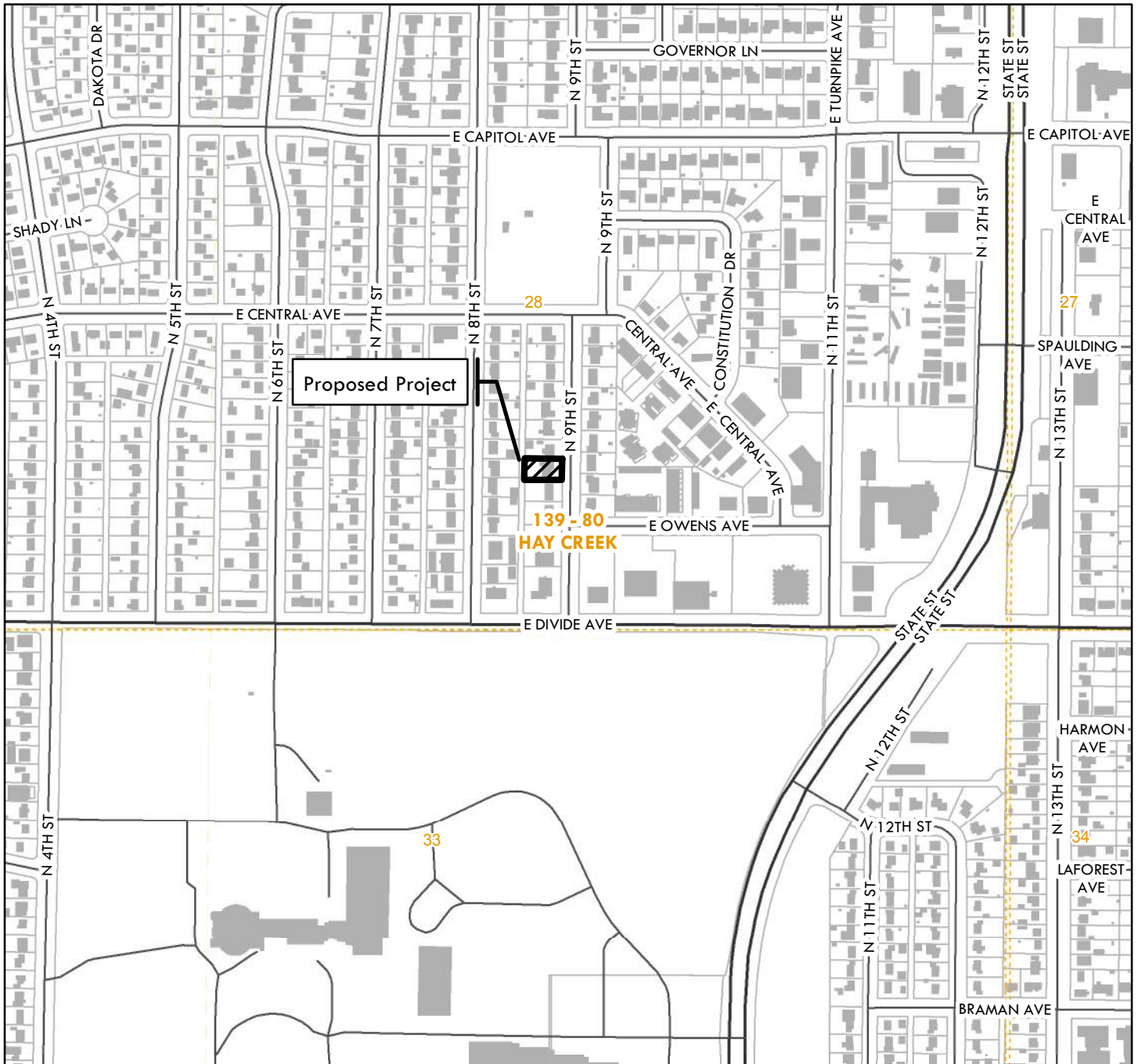
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Proposed Variance

VAR2018-006

Lot 8 and the North 9 feet of Lot 9, Block 10, Jennings's Second Addition



City Limits



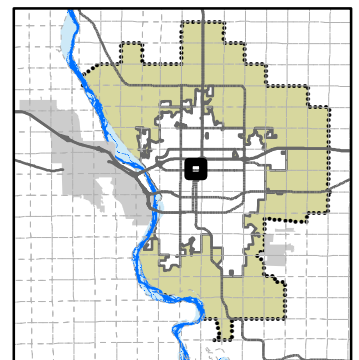
Bismarck ETA Jurisdiction

Section, township, and
range indicated in orange



City of Bismarck
Community Development Department
Planning Division
May 3, 2018 (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.







STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

Agenda Item 5

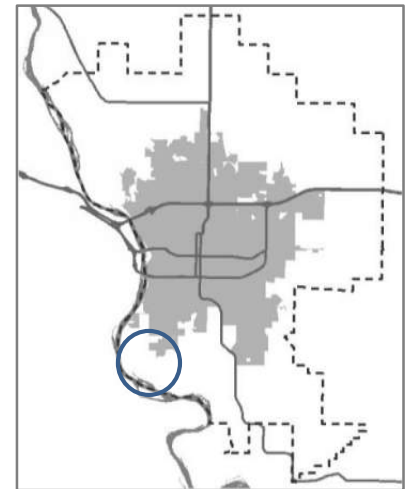
June 7, 2018

Application for: Variance

TRAKiT Project ID: VAR2018-007

Project Summary

Title:	Lot 4, Block 1, Wooded Acres Subdivision (3710 England Street)
Status:	Board of Adjustment
Owner(s):	Gwen Hubbard
Project Contact:	Gwen Hubbard
Location:	South of Bismarck, between Far West Drive and Scout Street, west of England Street
Request:	Variance from Section 14-04-19(6) of the City Code of Ordinances (FP – Floodplain District)



Staff Analysis

Gwen Hubbard is requesting a variance to allow the construction of a 320 square foot addition to an existing single-family dwelling, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, to be constructed below the required elevation of two feet above the Base Flood Elevation (BFE).

The existing single-family dwelling was constructed in 2001. The elevation certificate submitted with the building permit application in 2001 indicates a BFE of 1634 feet. The BFE was based off of the 1985 Flood Insurance Rate Map (FIRM). The elevation certificate submitted for the proposed addition establishes the current BFE at 1635.8 and is based off of the 2014 FIRM. According to this elevation certificate the existing single-family dwelling is constructed at the BFE.

At the time of construction, the existing single-family dwelling complied with Section 14-04-19(6) of the City Code of Ordinances (FP – Floodplain District) which required a new structure to be elevated on fill and or a permanent foundation to one foot above the BFE. This section of the ordinance was changed in 2009 to require all new structures to be elevated on fill and/or a permanent foundation to at least two feet above the base flood elevation.

However, the zoning ordinance also makes provisions for the construction of additions to existing structures that are considered post-FIRM buildings and are not considered to be a substantial improvement to allow the construction of an addition at the same elevation as the existing structure, provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one foot above the BFE.

The proposed addition is not considered a substantial improvement as it is not valued at equal to or greater than 50% of the market value of the existing dwelling. In addition, the dwelling is considered a Post-FIRM Building according to the zoning ordinance, as it was constructed after the initial Flood Insurance Rate Map (FIRM) was adopted for the City and its ETA in 1974. However, according to the elevation certificate submitted with the application the single-family dwelling is located at BFE, not one foot above, and does not qualify for the provision of the ordinance.

The City of Bismarck including its Extra Territorial Area (ETA) has recently become a participating community in the National Floodplain Insurance Program (NFIP) Community Rating System (CRS). The CRS is an incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. As a result, flood insurance premium rates may be discounted for policy holders to reflect the reduced flood risk resulting

(continued)

from the City of Bismarck and its ETA meeting the goals of the CRS program.

Variances from the provisions outlined in the FP – District in the Zoning Ordinance and subsequent findings to support a variance will be subject to additional review by Hazard Program Specialists with in the NFIP. Variances may impact the City of Bismarck's and its ETA's status and eligibility for participation in the NFIP. By participating in the NFIP, residents of the City of Bismarck and its ETA are eligible for flood insurance.

In addition, as the CRS designation is awarded to communities that go above and beyond FEMA floodplain management practices, an approval of a variance from the provisions outlined in the FP – Floodplain District in the Zoning Ordinance may result in the removal of the City of Bismarck and its ETA from the program which may cause discounted insurance premiums to rise.

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 14-09-19 (6)(b)(5) of the City Code of Ordinances (FP – Floodplain district / Additions to existing structures) states, "Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory building that is considered a post-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory building that is considered a pre-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure." According to the elevation certificate submitted with the application the single-family dwelling is located at BFE, not one foot above, and does not qualify for this provision of the ordinance.

Additional Consideration for Variances from Floodplain Provisions

1. In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 of the City Code of Ordinances (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:
 - a) The danger to life and property due to flooding or erosion damage;
 - b) The danger that materials may be swept onto other lands to the injury of others;
 - c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d) The importance of the services provided by the proposed facility to the community;
 - e) The necessity to the facility of a waterfront location, where applicable;
 - f) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion;
 - g) The compatibility of the proposed use with the existing and anticipated development;
 - h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(continued)

Required Findings of Fact | Any Variance

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 RR – 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.
3. The applicant has not shown good and sufficient cause for granting the variance.
 4. A failure to grant the variance would not result in exceptional hardship to the applicant.
 5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Site plan
3. Written Statement of Hardship
4. 2001 Elevation Certificate
5. 2018 Elevation Certificate

Required Findings of Fact | Floodplain Variance

1. The proposed accessory building may increase flood levels during the base flood discharge.
2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.

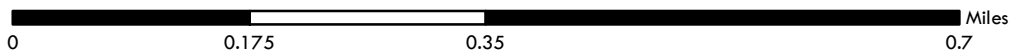
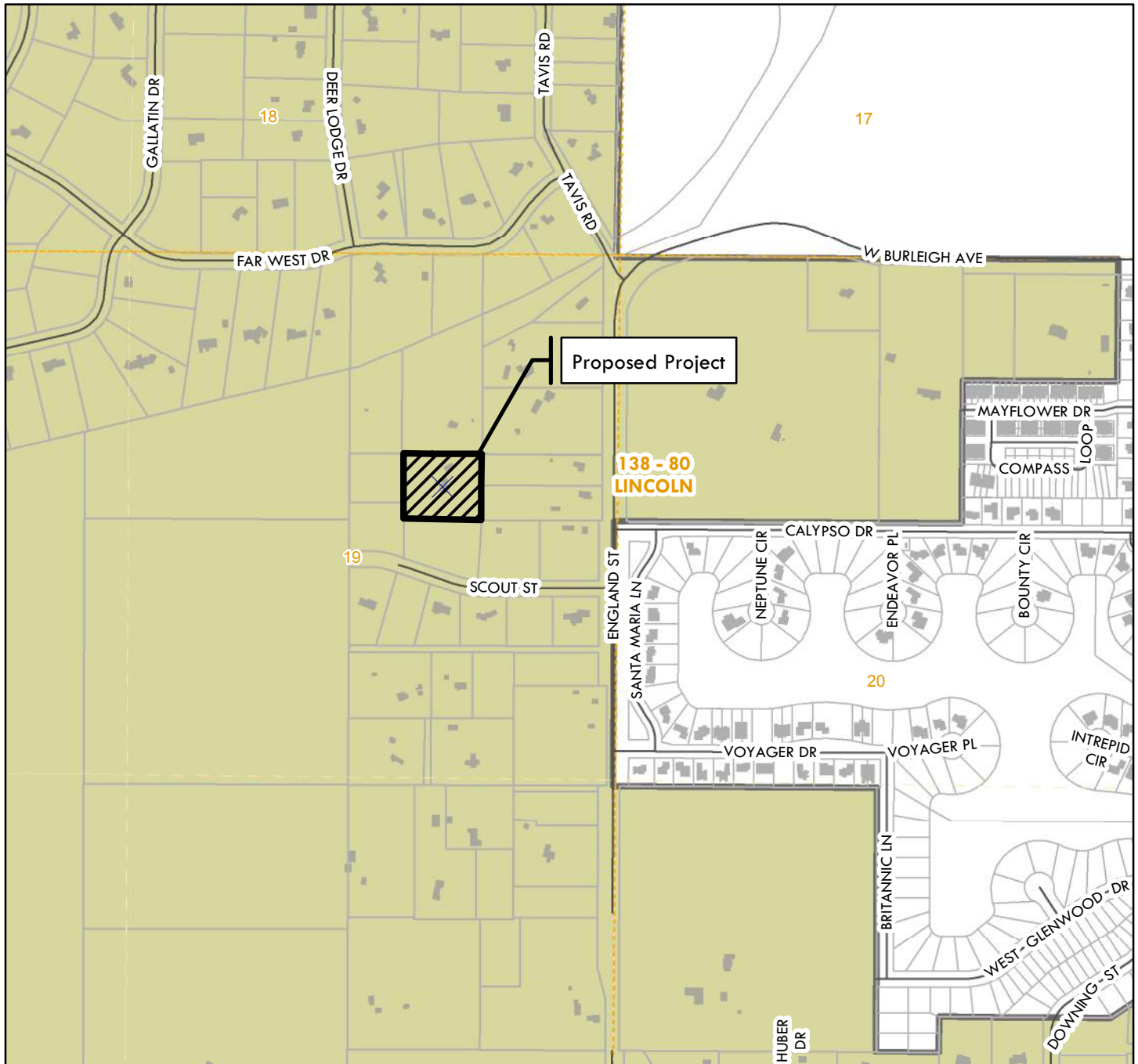
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Proposed Variance

Lot 4, Block 1, Wooded Acres Subdivision

VAR2018-007



City Limits



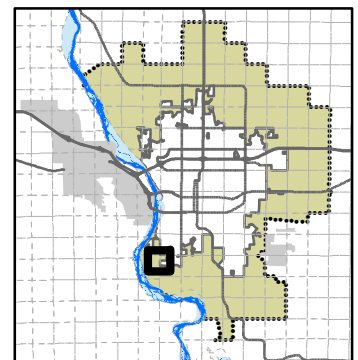
Bismarck ETA Jurisdiction

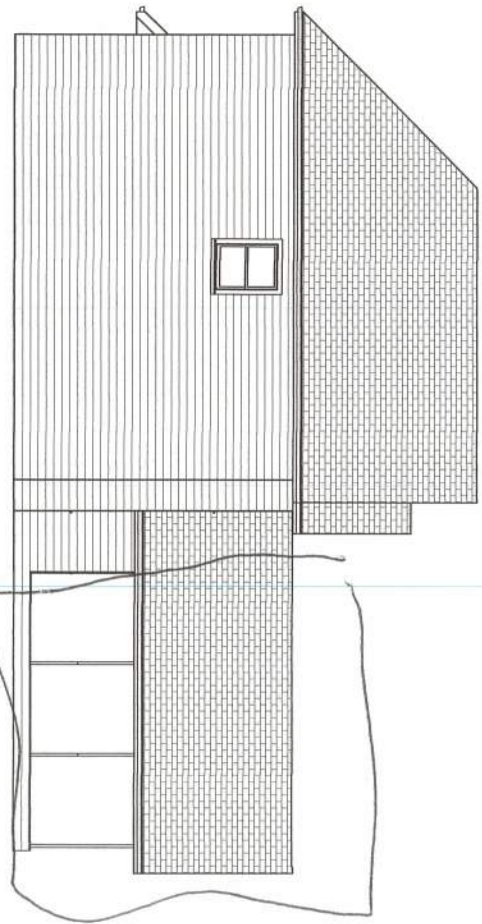
Section, township, and range indicated in orange



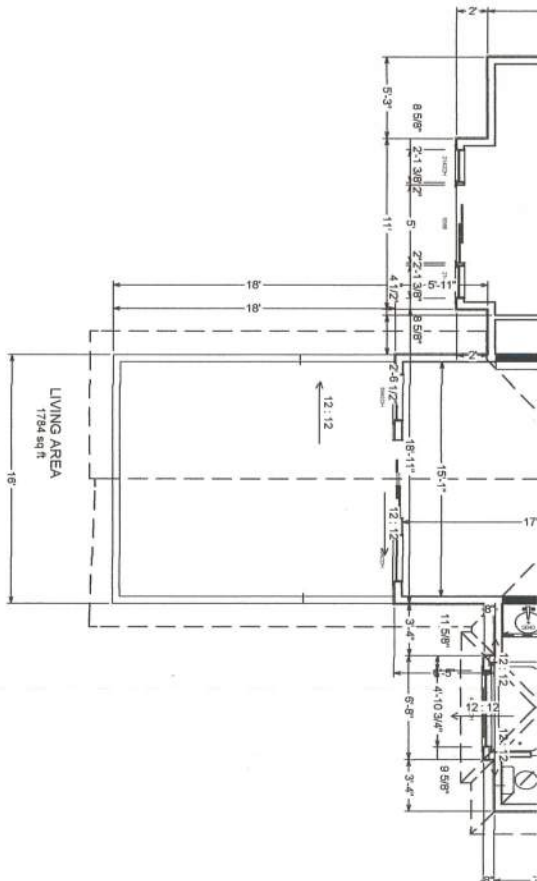
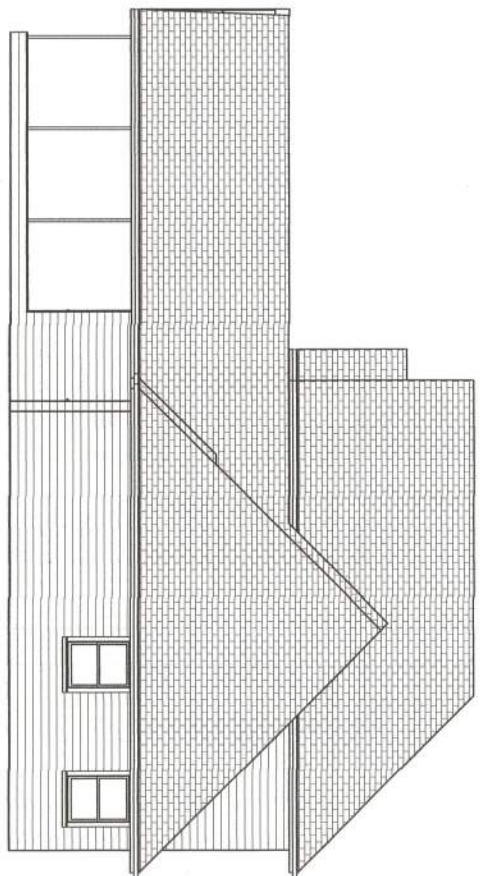
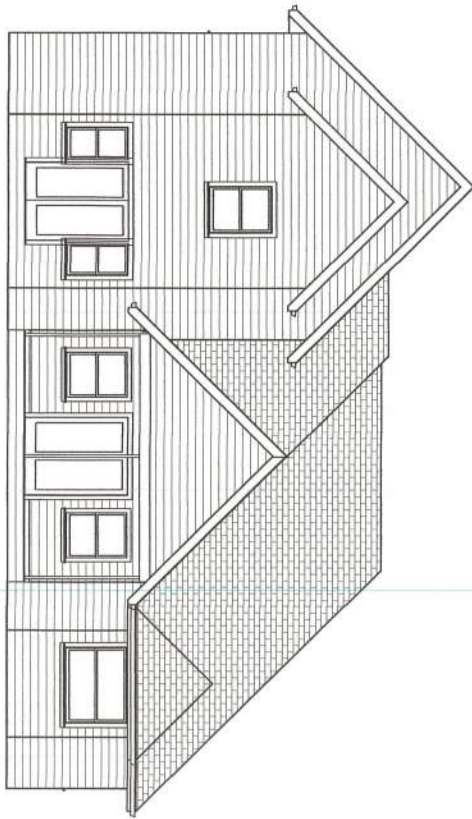
City of Bismarck
Community Development Department
Planning Division
May 14, 2018 (HLB)

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.





6' x 20'



PROJECT DESCRIPTION:		DATE:	
matt hubbard 9-30-17			
NO. DESCRIPTION		BY DATE	
SCALE:		DATE:	
DATE:		2	



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:
(Lot, Block, Addition/Subdivision)

Location of Property:

☐ City of Bismarck

☐ ETA

Type of Variance Requested:

Applicable Zoning Ordinance:
(Chapter/Section)

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.)

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

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

DATE SIGNATURE

nt By: NLC CONSULTING;

701 563 6118;

May-3-01 9:30;

Page 2

N. L. C. CONSULTING

LAND PLANNING AND SURVEYING CONSULTANTS
108 EAST SWEET AVENUE, BISMARCK, N.D. 58504


CERTIFICATE OF LOT ELEVATION FLOOD PLAIN AREAS

Name of Owner: Dave Nelson
Address: 521 North Anderson Street
Bismarck, North Dakota 58501
Builder: Nelson Builders
Lot and Block: East 330.00' of Lot Two (2) of Block One (1)
Street Address: 3610 England Street
Name of Subdivision: Midgett's First Subdivision
Section and Township: NE1/4 NE1/4 of Section 19, T.138N.-R.80W.
Type of Construction: Single Family Home

Land Elevations (Reference Points):

<u>T.B.M. No. 1: Top of 60d Nail in Tree, East of Building Site</u>	<u>Elevation = 1635.00</u>
<u>T.B.M. No. 2: Top of 60d Nail in Tree, West of Building Site</u>	<u>Elevation = 1635.00</u>
<u>T.B.M. No. 3: Top of 60d Nail in Tree, Southwest of Building Site</u>	<u>Elevation = 1635.00</u>

ESTABLISHED FLOOD PLAIN ELEVATION : 1634.0 (From FIRM)


Norman L. Ciavarella, R.P.L.S.
Registered Professional Land Surveyor
North Dakota Registration No. LS-2392



Dated this 2nd day of May, 2001.

ELEVATION CERTIFICATE

OMB No. 1660-0008

Important: Read the instructions on pages 1-9.

SECTION A - PROPERTY INFORMATION

FOR INSURANCE COMPANY USE

A1. Building Owner's Name DAVE NELSON

Policy Number:

A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
3710 England Street

Company NAIC Number:

City Bismarck

State ND

ZIP Code 58504

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
Lot 4 Block 1 Wooded Acres Subdivision

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) Addition

A5. Latitude/Longitude: Lat. N46.7626 Long. W100.8193 Horizontal Datum: ☐ NAD 1927 ☒ NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 1B

A8. For a building with a crawlspace or enclosure(s):

- a) Square footage of crawlspace or enclosure(s) N/A sq ft
b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade N/A
c) Total net area of flood openings in A8.b N/A sq in
d) Engineered flood openings? ☐ Yes ☒ No

A9. For a building with an attached garage:

- a) Square footage of attached garage 850 sq ft
b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade N/A
c) Total net area of flood openings in A9.b N/A sq in
d) Engineered flood openings? ☐ Yes ☒ No

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number
City of Bismarck 380149

B2. County Name
Burleigh

B3. State
ND

B4. Map/Panel Number
38015C0790D

B5. Suffix
D

B6. FIRM Index Date
8/4/2014

B7. FIRM Panel
Effective/Revised Date
8/4/2014

B8. Flood
Zone(s)
AE

B9. Base Flood Elevation(s) (Zone
AO, use base flood depth)
1635.8

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.

☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other/Source: _____

B11. Indicate elevation datum used for BFE in Item B9: ☐ NGVD 1929 ☒ NAVD 1988 ☐ Other/Source: _____

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No
Designation Date: _____
☐ CBRS ☐ OPA

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: ☒ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: BSC CORS

Vertical Datum: NAVD 1988

Indicate elevation datum used for the elevations in items a) through h) below. ☐ NGVD 1929 ☒ NAVD 1988 ☐ Other/Source: _____
Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- | | | |
|---|---------------|--|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor) | <u>1636.2</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| b) Top of the next higher floor | <u>N/A.</u> | <input type="checkbox"/> feet <input type="checkbox"/> meters |
| c) Bottom of the lowest horizontal structural member (V Zones only) | <u>N/A.</u> | <input type="checkbox"/> feet <input type="checkbox"/> meters |
| d) Attached garage (top of slab) | <u>1635.8</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| e) Lowest elevation of machinery or equipment servicing the building
(Describe type of equipment and location in Comments) | <u>1635.8</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| f) Lowest adjacent (finished) grade next to building (LAG) | <u>1635.6</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| g) Highest adjacent (finished) grade next to building (HAG) | <u>1636.1</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support | <u>1635.6</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

☒ Check here if comments are provided on back of form.

☐ Check here if attachments.

Were latitude and longitude in Section A provided by a licensed land surveyor? ☒ Yes ☐ No

Certifier's Name Tim Langerud

License Number 5770

Title PLS

Company Name Swenson, Hagen & Co.

Address 909 Basin Ave

City Bismarck

State ND

ZIP Code 58504

Signature Tim Langerud

Date 4-20-18

Telephone 701-223-2600




ELEVATION CERTIFICATE, page 2

IMPORTANT: In these spaces, copy the corresponding information from Section A.		FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 3710 England Street		Policy Number:
City Bismarck	State ND ZIP Code 58504	Company NAIC Number:

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments This certificate is valid only for the information in A1 through A3 and Section B and not intended for insurance purposes. Information in C2 a-h was provided by survey on 4-16-18.

Signature  Date 4-20-18

SECTION E – BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zones AO and A (without BFE), complete Items E1–E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1–E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.


- E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
- a) Top of bottom floor (including basement, crawlspace, or enclosure) is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- b) Top of bottom floor (including basement, crawlspace, or enclosure) is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E2. For Building Diagrams 6–9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 8–9 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E3. Attached garage (top of slab) is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E4. Top of platform of machinery and/or equipment servicing the building is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? ☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F – PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. The statements in Sections A, B, and E are correct to the best of my knowledge.

Property Owner's or Owner's Authorized Representative's Name _____

Address 3710 England St City Bismarck State ND ZIP Code 58504

Signature  Date 4-25-2018 Telephone 701-391-3890

Comments _____

☐ Check here if attachments.

SECTION G – COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8–G10. In Puerto Rico only, enter meters.

- G1. ☐ The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)
- G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.
- G3. ☐ The following information (Items G4–G10) is provided for community floodplain management purposes.

G4. Permit Number	G5. Date Permit Issued	G6. Date Certificate Of Compliance/Occupancy Issued
-------------------	------------------------	---

G7. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building: _____ ☐ feet ☐ meters Datum _____

G9. BFE or (in Zone AO) depth of flooding at the building site: _____ ☐ feet ☐ meters Datum _____

G10. Community's design flood elevation: _____ ☐ feet ☐ meters Datum _____

Local Official's Name _____ Title _____

Community Name _____ Telephone _____

Signature _____ Date _____

Comments _____

☐ Check here if attachments.

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BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
April 5, 2018

The Bismarck Board of Adjustment met on April 5, 2018, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

Members present were Ken Hoff, Chris Seifert, Curtis Janssen, Jennifer Clark and Michael Marback.

Member absent was Rick Wohl.

Staff members present were Jenny Wollmuth – Planner, Brady Blaskowski – Building Official, Melanie LaCour – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chairman Marback called for approval of the minutes of the March 1, 2018 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Janssen to approve the minutes of the March 1, 2018 meeting, as presented. With Board Members Clark, Hoff, Janssen, Marback and Seifert voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-03-08(4)(Q) OF THE CITY CODE OF ORDINANCES (SPECIAL USES) – LOTS 1-16 AND LOTS 24-29, BLOCK 91, MCKENZIE AND COFFINS ADDITION (1030 NORTH 6TH STREET)

Chairman Marback stated the applicant, McCabe United Methodist Church, is requesting a variance to eliminate the requirement to provide an outdoor recreation area in conjunction with a child care center.

Ms. Wollmuth said the Planning and Zoning Commission approved a special use permit to operate a child care center at this location with the condition that the Board of Adjustment approve a variance to eliminate the required outdoor recreation space on site. Ms. Wollmuth then explained that a child care center is allowed as a special use in the RM30 – Residential zoning district, provided certain conditions are met, however, the proposed child care center meets four of the five provisions outlined in Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses) for the approval of a childcare center. She said the provision of the ordinance that is not met is as follows: *“Each lot shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a*

minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility it is intended to serve, and must be located behind the building setback lines.” She went on to say that according to the information submitted for approval of the special use permit the child care center would accommodate 22 students which would require 1,650 square feet of outdoor recreational space, adding it has been common practice to allow the outdoor recreation space provided to be adequate for the largest class size using the space at one time.

Ms. Wollmuth closed by saying the applicant has indicated that the existing church facility provides interior recreation area and that there is an existing 1,872 square foot gymnasium in the lower level of the building.

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 RM30-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 findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked when the Planning and Zoning Commission approved the request for the special use permit. Ms. Wollmuth said that the conditional approval was given at their February 28th meeting.

Mr. Hoff asked if the ordinance requires in-home child care to provide the same amount of green space as a center. Ms. Wollmuth said in-home child care is limited on how many children they can have and only child care centers are required to obtain a special use permit in addition to the green space requirement.

Ms. Clark asked if both full-time and after-school care would be provided here. Ms. Wollmuth said it is her understanding that the intended use is for full-time preschool.

Mark Ermentraut, Executive Pastor, McCabe United Methodist Church, said the only issue they have with being able to operate a child care center and preschool at this location is of the green space requirement. He said they have had a strategic partnership with Open Door Preschool for over 40 years and that the service will go away if this accommodation cannot be made, due to overlaps in expenses and cash flow issues. He said they could reduce overlapping expenses by moving the preschool from its current location to the church with this option. He said they did operate a kindergarten at the church at one time which is why the existing gymnasium and classrooms were added. He said he feels any parking issues and increases in traffic would be minimal as there is adequate parking to accommodate this use and they would also still be able to provide outreach for the childcare needs of the community. He added that the property is landlocked and though they could provide some of the required green space, they also want to keep the property aesthetically pleasing.

Chairman Marback asked if the green space would be along the east and north sides of the property. Pastor Ermentraut said that is correct, that it would be along East Boulevard Avenue and North 6th Street. He said they want to maintain a high quality of care for their children and families, as well as their staff and the facility.

Ms. Clark asked if the green space available, even if it is not desirable, would be enough to meet the requirements of the ordinance, or if there is a strategy in mind for outdoor time if the requirement cannot be met.

Pastor Ermentraut said they do have the indoor gym and, weather permitting, access to the Will-Moore Elementary School playground and scheduled field trips.

Ms. Clark said she does not feel taking the children across East Boulevard Avenue to an outdoor space would be ideal and asked if converting some of the parking area to a play area like other schools in the area is an option.

Pastor Ermentraut said they would not be opposed to designating some of the parking area as a play area and does not foresee any objections.

Mr. Seifert said he knows Burleigh County Social Services (BCSS) has walked through the site and when he contacted them they said they were not aware that the City has an ordinance requiring there to be outdoor play areas on the premises. He then asked if the gym in the lower level of the building has windows.

Pastor Ermentraut said it does have windows and that it was his understanding when BCSS did their walk-through that it was deemed an acceptable facility for a child care use. He said they can explore the option of utilizing parking area for a play space if needed.

Mr. Hoff asked what the specific hardship for the need for a variance is with this request. He asked if the church is willing to help keep the current preschool location open instead of closing it and moving it.

Pastor Ermentraut said there has been support from the church to the preschool in years past, but that has since been discontinued. He said other local United Methodist Churches have made significant investments in the preschool in the past, but in 2017 and 2018 those commitments were not able to be met.

Mr. Hoff asked any of the other church locations could meet the requirements of the zoning ordinance. Pastor Ermentraut said the McCabe United Methodist Board of Trustees is significantly involved in Open Door Preschool and also owns the current building the preschool uses, so this location is most preferred.

Ms. Clark asked if any after-school child care services would be offered. Pastor Ermentraut said they will not be offering school-age care at this time.

Chairman Marback opened the public hearing.

Terry Suko, McCabe United Methodist Church Facility Director, said the benefit of the desired facility use is to be able to provide more recreation than typical child care centers. He said many child care centers are not currently using their outdoor spaces because of the weather, but because McCabe has their indoor gym they have space beyond their classrooms to be able to play and learn. He said the main reason they want the preschool at this location instead of open of the others is because of that better, additional indoor recreational area.

Ms. Clark asked if it is felt that there would be any problems during the week with dedicating some of the parking area as a play area and then opening it back up for parking on the weekends. Mr. Suko said they did expand their parking area by purchasing the adjacent lot, so that might be a possibility.

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

Ms. Clark asked if any parking issues would be created if a certain area was not available as parking spaces during the week.

Ms. Wollmuth said that scenario has not been reviewed since the initial request was to eliminate the outdoor space requirement. She said there is an ordinance in place for simultaneous uses, similar to that suggestion, and staff would have to work with the applicant on deciding if that option would work.

Mr. Seifert asked if the fenced in area then would be on the north and east sides of the building and if the green space requirement can be minimized rather than completely eliminated.

Ms. Wollmuth clarified that there needs to be outdoor recreational space for the child care center and that this space does not necessarily need to be 'green space'.

Mr. Hoff asked how the 1,650 square feet required was calculated. Ms. Wollmuth said the practice with this type of facility is to calculate the amount of space needed based on how many children would be outside at one time.

Mr. Janssen asked if the entire area would be required to be fenced in. Ms. Wollmuth said that is correct and that it also has to meet the building setback requirements as well.

Mr. Hoff said the applicant could rethink their request and reduce the green space requirement rather than eliminate it and it seems the that they are ok with the requirement, but not the fact that it would have to have a fence around it.

Ms. Clark said that seems to be a technicality and feels outside and on-site outdoor space is needed when it comes to child care centers.

MOTION: A motion was made by Ms. Clark to deny the request for a variance from Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses) on Lots 1-16 and Lots 24-29, Block 91, McKenzie and Coffins Addition (1030 North 6th Street). The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Janssen, Marback and Seifert voting in favor of the motion, the motion was unanimously approved and the variance was denied.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:28 p.m. to meet again on May 3, 2018.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman