



BOARD OF ADJUSTMENT MEETING AGENDA July 1, 2021

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
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The City of Bismarck is encouraging citizens to provide their comments via email to jwollmuth@bismarcknd.gov. The comments will be sent to the Board of Adjustment members prior to the meeting and included in the minutes of the meeting. To ensure that comments are compiled and forwarded to the Board of Adjustment with enough time to review all comments, please submit your comments no later than 12 noon the day of the meeting. Comments should also include which agenda item number or topic your comment references and your name (anonymous comments will not be forwarded

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

As always, live meeting coverage is available on Government Access Channels 2 & 602HD, Radio Access 102.5 FM Radio, or stream FreeTV.org and RadioAccess.org.

Item No.	Page No.
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MINUTES

1. Consider approval of the minutes of the May 6, 2021 meeting of the Bismarck Board of Adjustment

PUBLIC HEARING

2. **Variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front Yard)** Lot 12, Block 3, Replat of Lot 10, Block 1, North Hills 1st Addition | VAR2021-005

Owner / Applicant: Jeramie and Janelle Middlestead

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



3. **Variance from Section 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Lot Coverage)** Lot 23, Block 5, Cottonwood Parkview Addition | VAR2021-004

Owner / Applicant: Al Wangler

Board Action: ☐approve ☐continue ☐table ☐deny 10

OTHER BUSINESS

4. **Other Business:**
- a. Member and alternate member appointment
 - b. Board bylaw and procedural updates
 - c. Zoning Ordinance Text Amendments
 - d. Appeal update (Lot 23, Block 2, Copper Ridge Subdivision)

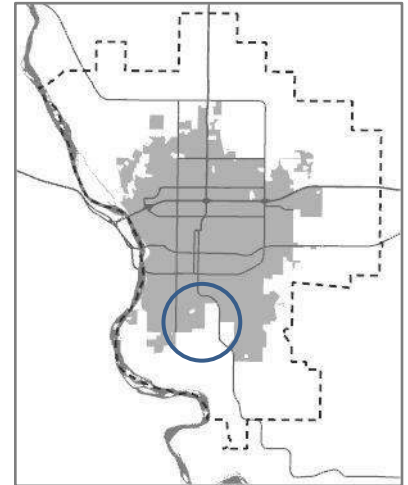
ADJOURNMENT

5. **Adjourn:** The next regular meeting date is scheduled for **August 5, 2021**

Enclosures: Meeting Minutes of May 6, 2021

Project Summary

<i>Title:</i>	Lot 23, Block 5, Cottonwood Parkview Addition (406 Lennox Drive)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Al Wangler
<i>Project Contact:</i>	Al Wangler
<i>Location:</i>	In south Bismarck, east of South Washington Street and south of Santa Fe Avenue, along the north side of Lennox Drive
<i>Request:</i>	Variance from 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Lot Coverage)



Staff Analysis

Al Wangler is requesting a variance to increase the maximum lot coverage for a lot located within the R5 – Residential zoning district from 30% to 31.2% in order to construct a covered patio (approximately 180 square feet) onto the single-family dwelling currently under construction.

Background Information

A property's lot coverage is determined by adding the ground area of all existing and proposed buildings, including covered decks and porches.

During the permit review it was discovered that the single-family dwelling exceeded the maximum lot coverage. The property owner modified the building plans and removed the covered patio. A building permit was issued for the single-family dwelling in May 2021. A copy of the building permit and review notes are attached.

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 owners, 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 / Lot Coverage) states, "The ground area occupied by the principal and accessory buildings shall not exceed thirty (30) percent of the total area of the lot."

According to the building plan submitted with the application, the proposed covered porch would increase the lot coverage from 30% to 31.2%.

Required Findings of Fact (relating to land use)

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

(continued)

to other properties in this area and within R5 - Residential zoning district.

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

Staff Recommendation

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

Attachments

1. Location Map
2. Aerial Map
3. Building Plan
4. Building Permit
5. Permit Review Notes
6. Written Statement of Hardship

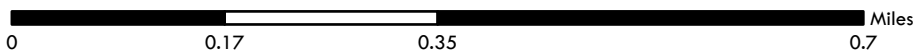
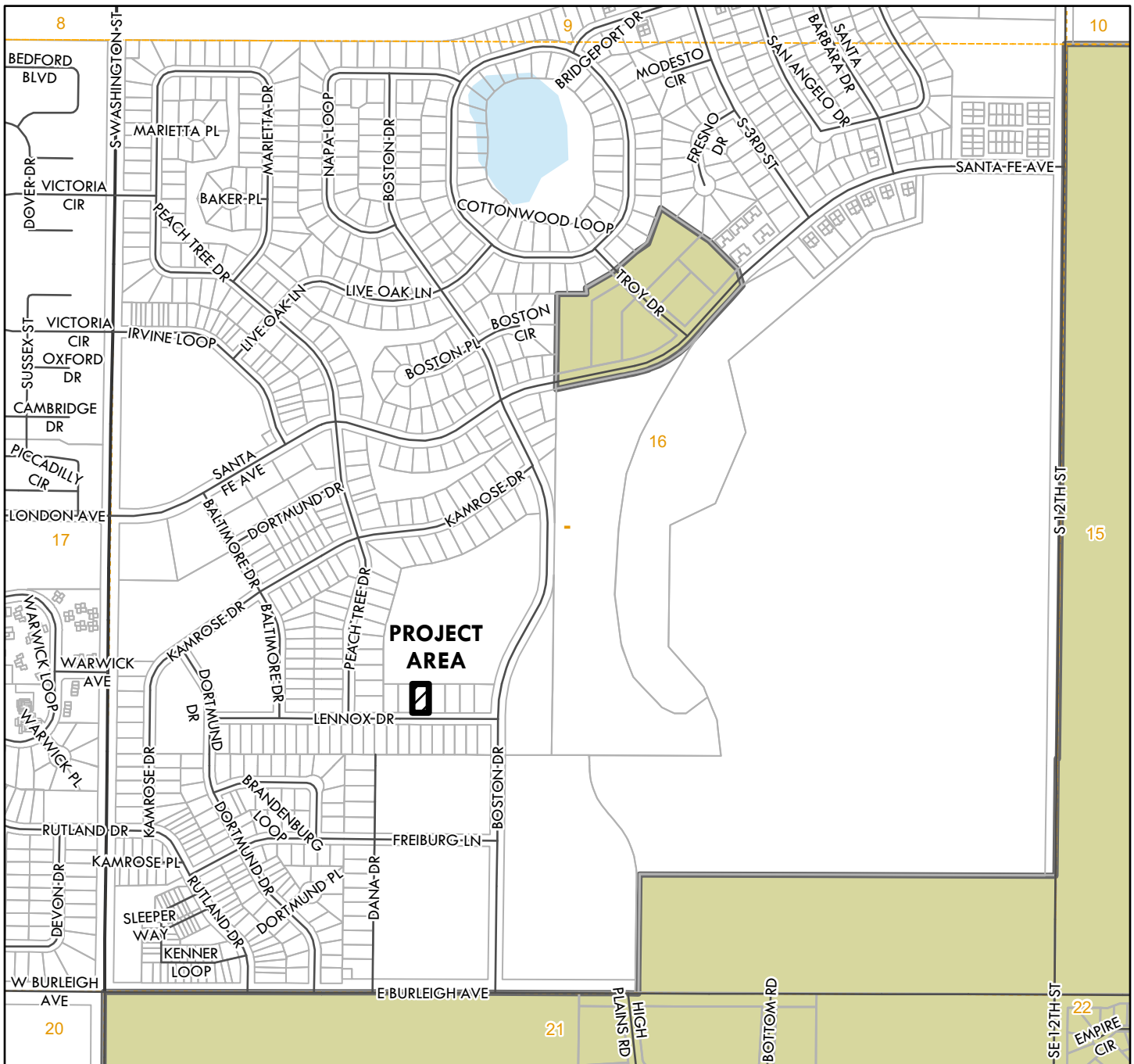
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

COTTONWOOD PARKVIEW ADDITION, L23, B5

VAR2021-004



City Limits



County Outside ETA

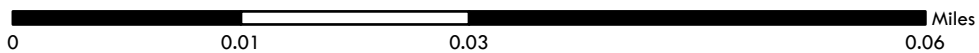
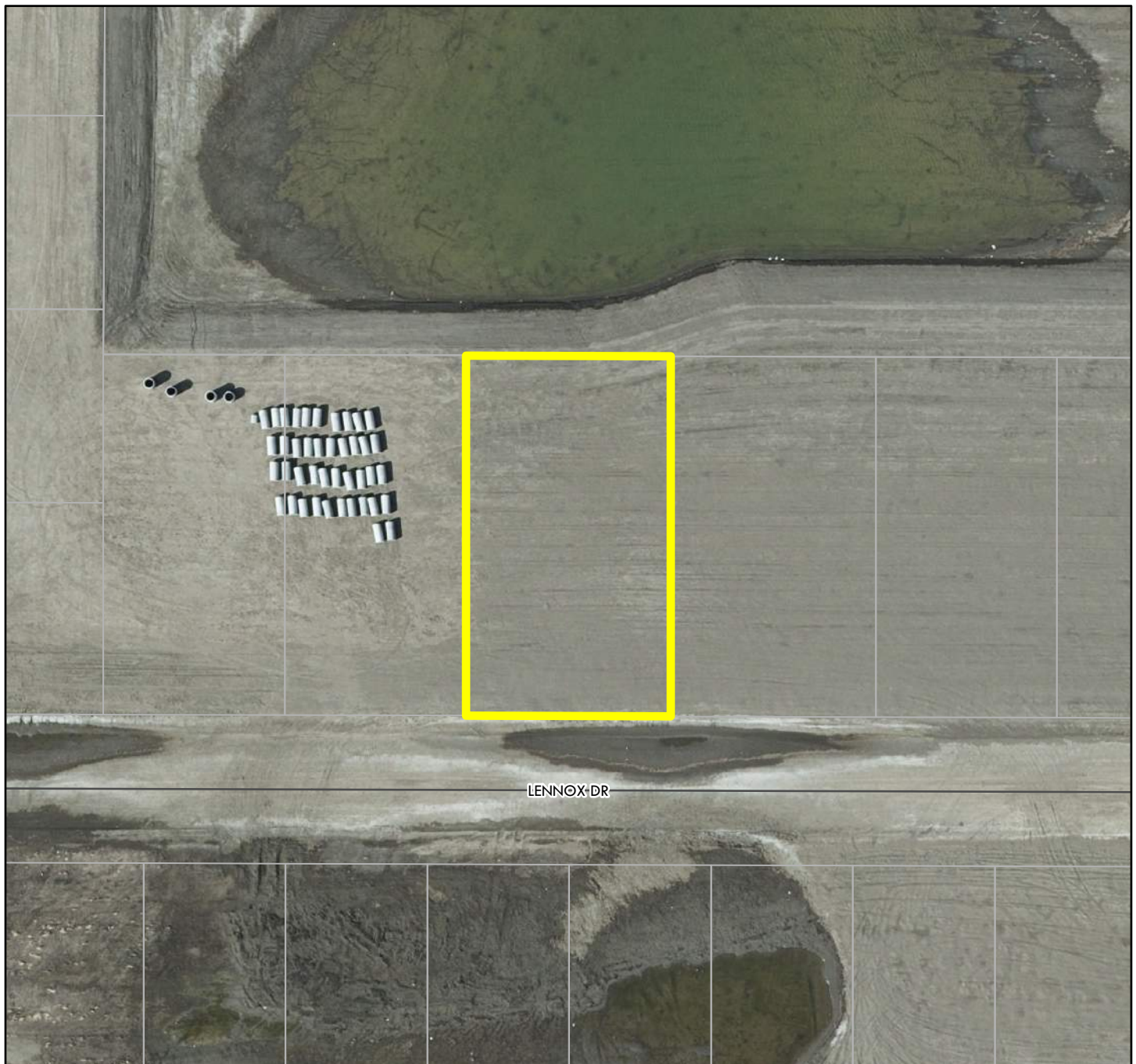


Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
June 9, 2021 (HLB)

*Section, township, and
range indicated in orange*

*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.*

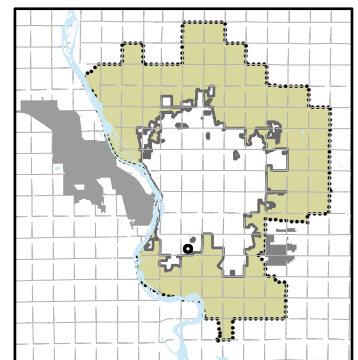


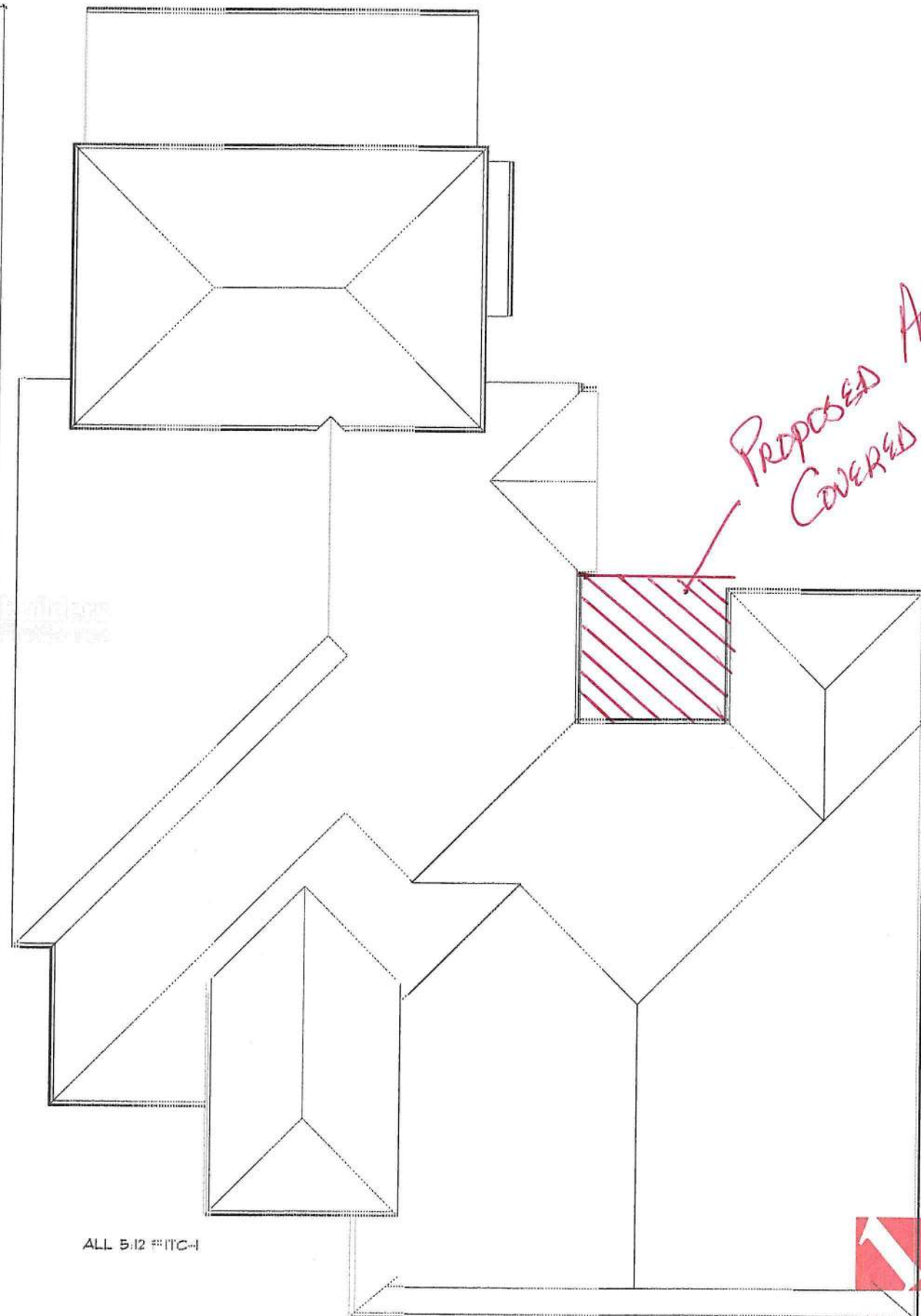
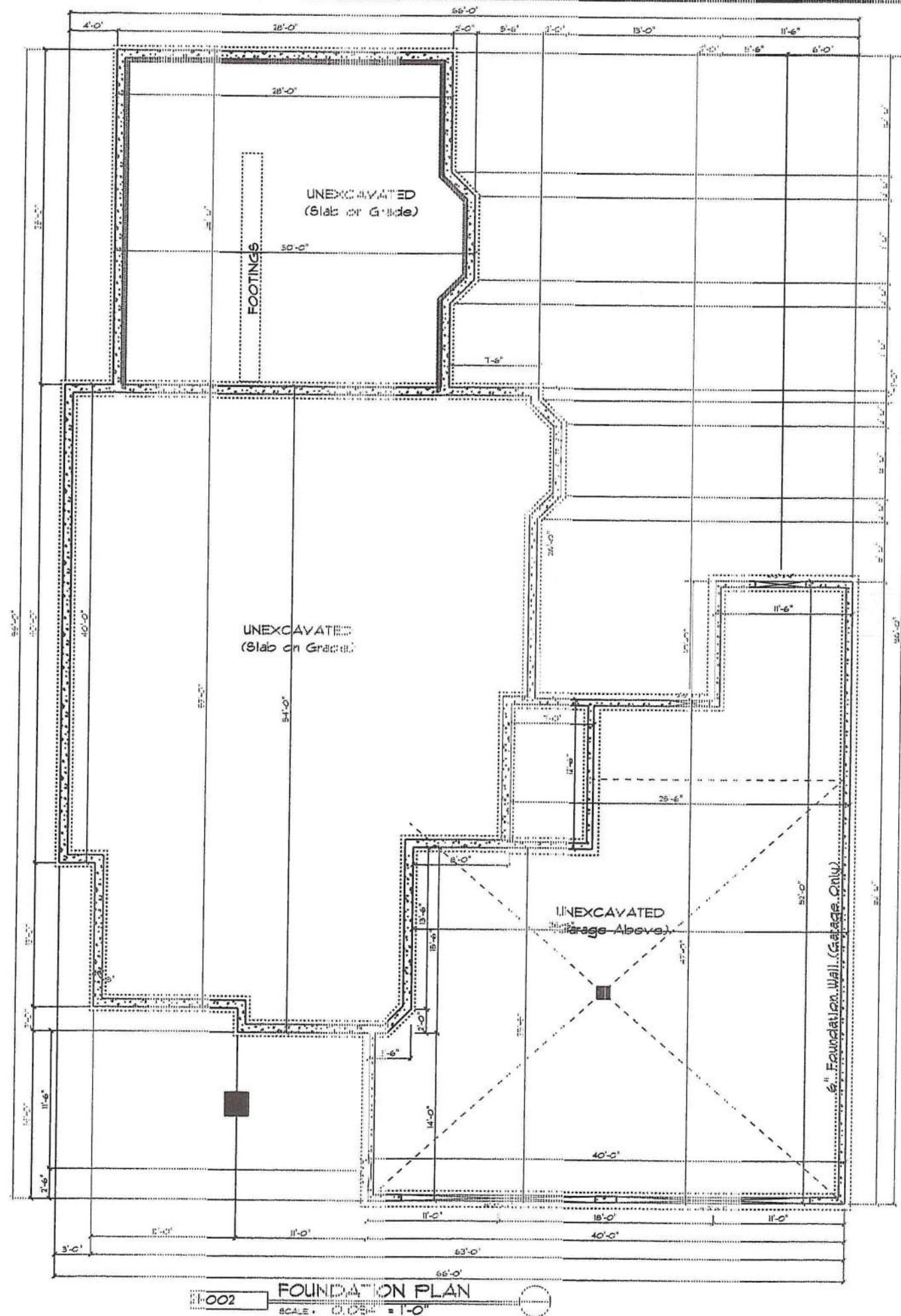
 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Department
Planning Division
June 21, 2021

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MAY 28 2021

NOTE: FERTILIZER DIMENSIONS

1513 39TH AVE.
P.O. BOX 39
MANDAY, ND 58554
PHONE: 663-2861
FAX: 663-346



PLAN # 21-002
CONTRACTOR Shaun Kambler Construction
CUSTOMER Al Wiegler
PRINT DATE: Wednesday, May 19, 2010
PRINT TIME: 04:31 PM
SCALE: 3/4" = 1'-0"
DRAWN BY: Jeremy Bunker



BUILDING RESIDENTIAL
NEW CONSTRUCTION

Permit: BRES2021-0195
Approved By: BBLA
Issued Date: 5/13/2021
Expiration Date: 11/16/2021
Permit Fee: 2056.09

Bismarck Community Development Department *Building Inspections

221 North 5th Street * PO Box 5503 * Bismarck, ND 58506-5503 * www.bismarcknd.gov

* Phone: 701-355-1465 * Fax: 701-222-6450

Owner: WANGLERS INC

Contractor: SHAUN KESSLER CONSTRUCTION INC

Address: 406 LENNOX DR

Phone Number: [REDACTED]

Location: CITY OF BISMARCK

Front Yard Set Back: 25

Property Number: 2310-005-110

Rear Yard Set Back: 20

Legal Description: LOT 23 LOT 23 LOT 23

Side Yard Set Back: 6-6

Easements: 10' UE REAR PL (N)

15' STORMWATER EASEMENT RT SIDE YARD PL (E)

Description of Work: SINGLE FAMILY DWELLING W/ATTACHED GARAGE

Additional Notes:

Work under this permit must commence within 180 days of permit issuance. Permittee must comply with all codes and ordinances applicable to work. Issuance of the permit does not grant any authorities 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 or 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, this owner, or to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform to the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities.



Permit Reviews City of Bismarck

Permit Number: BRES2021-0195

Description: **SINGLE FAMILY DWELLING W/ATTACHED GARAGE**

Applied: **3/25/2021**

Approved: **5/13/2021**

Site Address: **406 LENNOX DR**

Issued: **5/13/2021**

Finalized:

City, State Zip Code: **BISMARCK, ND**

Status: **ISSUED**

Applicant: **SHAUN KESSLER CONSTRUCTION INC**

Parent Permit:

Owner: **WANGLERS INC**

Parent Project:

Contractor: **SHAUN KESSLER CONSTRUCTION INC**

Details:

LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
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Review Group: AUTO

3/25/2021	5/13/2021	4/1/2021	BUILDING RESIDENTIAL	Brady Blaskowski	APPROVED	
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Notes:

NO SEWER OR WATER ON HOLD

Water an sewer are under contract.

Good morning Al,

After we talked yesterday I took a look at the building plans again in order to calculate the lot coverage for myself. I did confirm what we discussed yesterday, the property is located in the R5 district and the lot coverage for this project will need to be revised to less than or equal to 30%. The allowable lot coverage for this property is 4,368sf, the current design shows 4,665sf.

While I was measuring the plans I noticed that there is an area in the garage that is labeled storm shelter / storage. A storm shelter is an allowable use; however, a storm shelter must be designed in accordance with the ICC/NSSA-500. I also noticed that the storm shelter / storage area looks to be provided with a flight of stairs. The elevation certificate shows the lowest floor elevation of the building (including basement, crawlspace, or enclosure) is 1636.2, the elevation of the next higher floor and the finished floor elevation of the attached garage at 1637.2. Is this information correct? What is the ceiling height of the crawlspace and the storm shelter / storage room? I would appreciate it if you would provide an elevation view plan that shows the elevation of each area so it is clear what elevations are being shown on the elevation certificate.

Please contact me if you have any questions.

Revised preliminary plans have been received.

3/25/2021	4/5/2021	3/30/2021	BUILDING STORM WATER	Terry Halstengard	NOT APPLICABLE	
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Notes:

3/25/2021		3/26/2021	INITIAL CONCRETE PUBLIC ROW	Dave Renner		
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Notes:



Permit Reviews City of Bismarck

Review Group: BUILDING INSPECTIONS						
3/30/2021	5/6/2021	3/31/2021	BLD FLOODPLAIN	Brady Blaskowski	APPROVED	

Notes:

The Building Inspections Division has reviewed your permit application for development at the above referenced address. Portions of this property have been removed from the special Flood Hazard Area by a letter of map revision based on fill (LOMR-F). A revised lot survey identifying the revised floodplain boundary line, the distance all structures will be setback from the floodplain boundary, and an elevation certificate must be submitted to the Building Inspections Division for review.

Please contact me if you have any questions.



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)

MAY 28 2021

NOTE: WRITTEN STATEMENTS OF HARDSHIP MUST ACCOMPANY EVERY VARIANCE REQUEST APPLICATION

PROPERTY INFORMATION

Property Address or Legal Description:
(Lot, Block, Addition/Subdivision)

406 Lennox Drive

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.)

Strict adherence to this ordinance would require current plan to be modified from an R-1b allowance to the R-5 zoning of this lot.

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

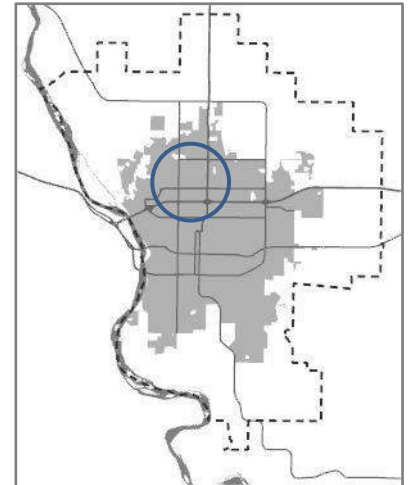
Allowing the covered porch area requested would eliminate ice and snow build up during winter months preventing icy walk ways.

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

Allowing an additional 1.2% (180 sq.ft.) of the total lot coverage would enable current plan for covered porch area.

Project Summary

<i>Title:</i>	Lot 12, Block 3, Replat of Lot 10, Block 1, North Hills 1 st Addition (2981 Vancouver Lane)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Jeramie and Janelle Middlestead
<i>Project Contact:</i>	Jeramie Middlestead
<i>Location:</i>	In north central Bismarck, north of East Century Avenue, between North Washington Street and Winnipeg Drive in the southeast quadrant of the intersection of Ontario Land and Vancouver Lane
<i>Request:</i>	Variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front Yard)



Staff Analysis

Jeramie and Janelle Middlestead are requesting a variance to reduce the required front yard setback located along the north side of their property, adjacent to Ontario Lane, from 25 feet to 4 feet in order to construct a 192 square foot accessory building.

Background Information

The property is located on a lot that is adjacent to public rights-of-way on three sides, as such the property has three front yards. A building permit was issued for a 96 square foot accessory building in 2007. The accessory building is located within the front yard setback along the east side of the property. According to permit records, the Building Official at the time administratively approved the placement of the building within the required setback. A copy of the permit and inspection notes are attached.

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 owners, as distinguished from a mere inconvenience or desire to increase the financial return.”

Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential / Front Yard) states, “Each lot or parcel shall have a front yard for principal or accessory structures not less than twenty-five (25) feet in depth.” According to the site plan submitted with the application, the proposed accessory building would be located 4 feet from the front property line adjacent to Ontario Lane.

(continued)

Required Findings of Fact (relating to land use)

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within R5 – Residential zoning district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Staff Recommendation

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

Attachments

1. Location Map
2. Aerial Map
3. Site Plan
4. Written Statement of Hardship
5. 2007 Building Permit inspection notes

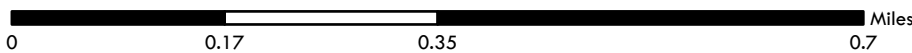
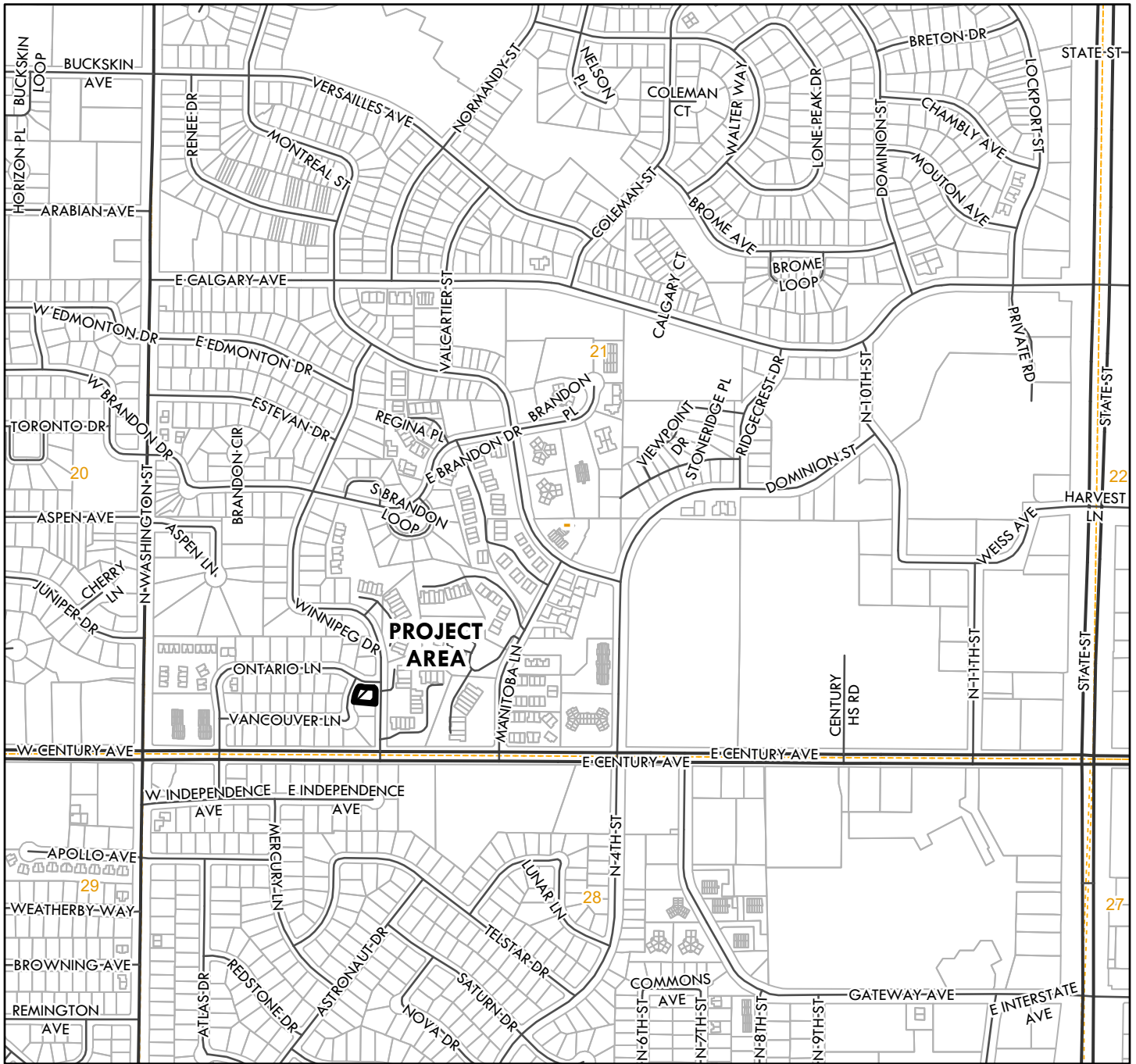
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

VAR2021-005

NORTH HILLS 1ST ADDITION 1ST REPLAT, L12, B1



City Limits



County Outside ETA

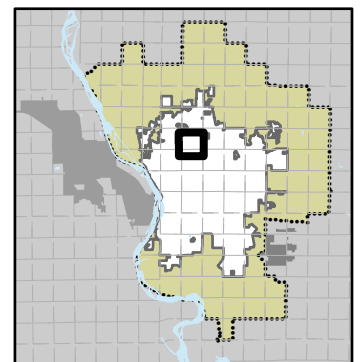


Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
June 9, 2021 (HLB)

*Section, township, and
range indicated in orange*

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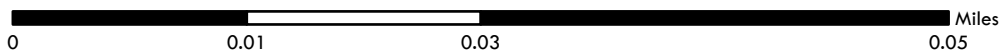
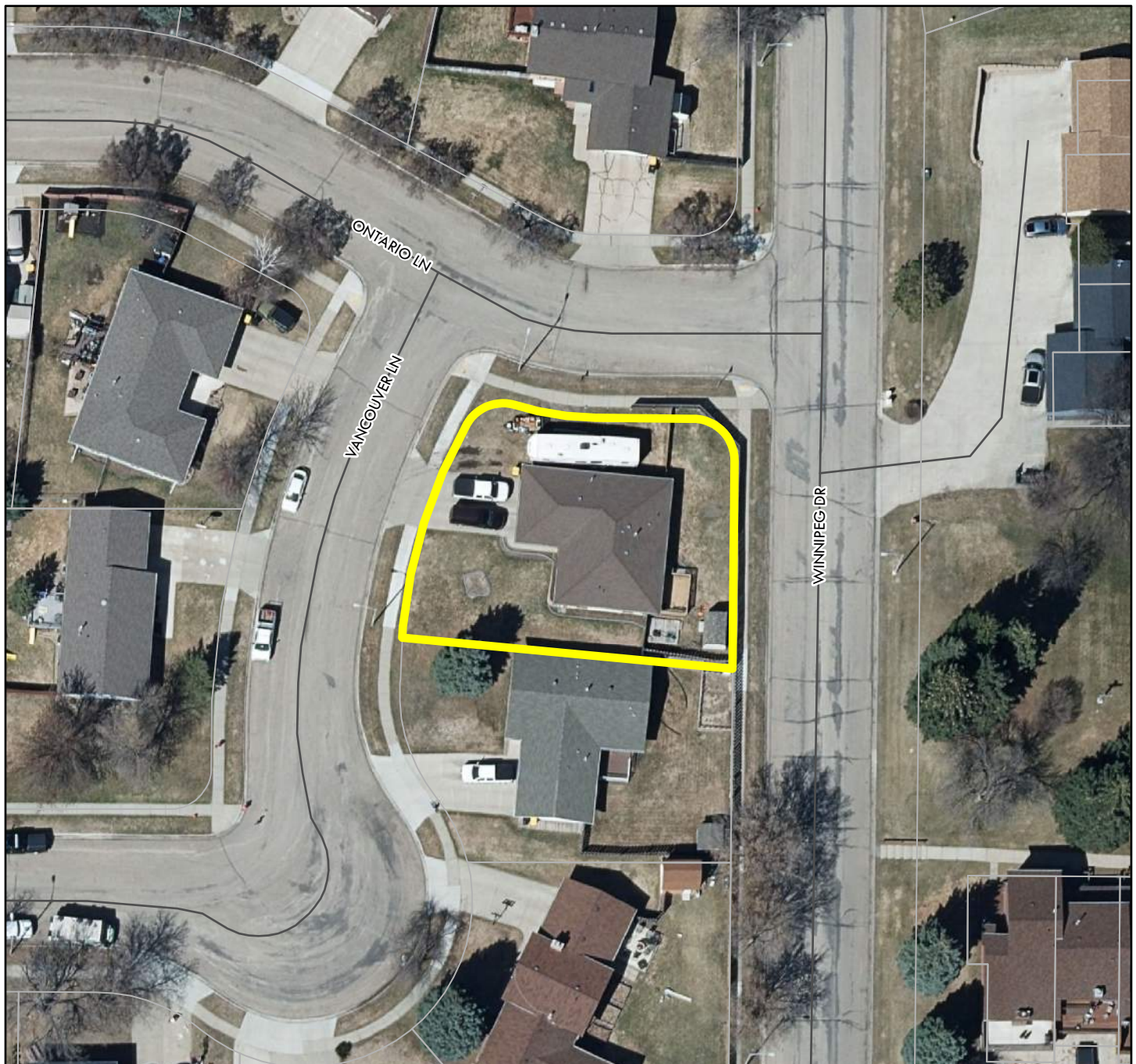




Aerial Map

NORTH HILLS 1ST ADDITION 1ST REPLAT, L12, B1

VAR2021-005

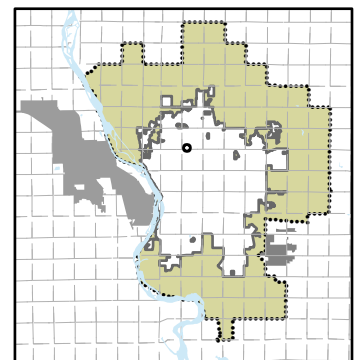


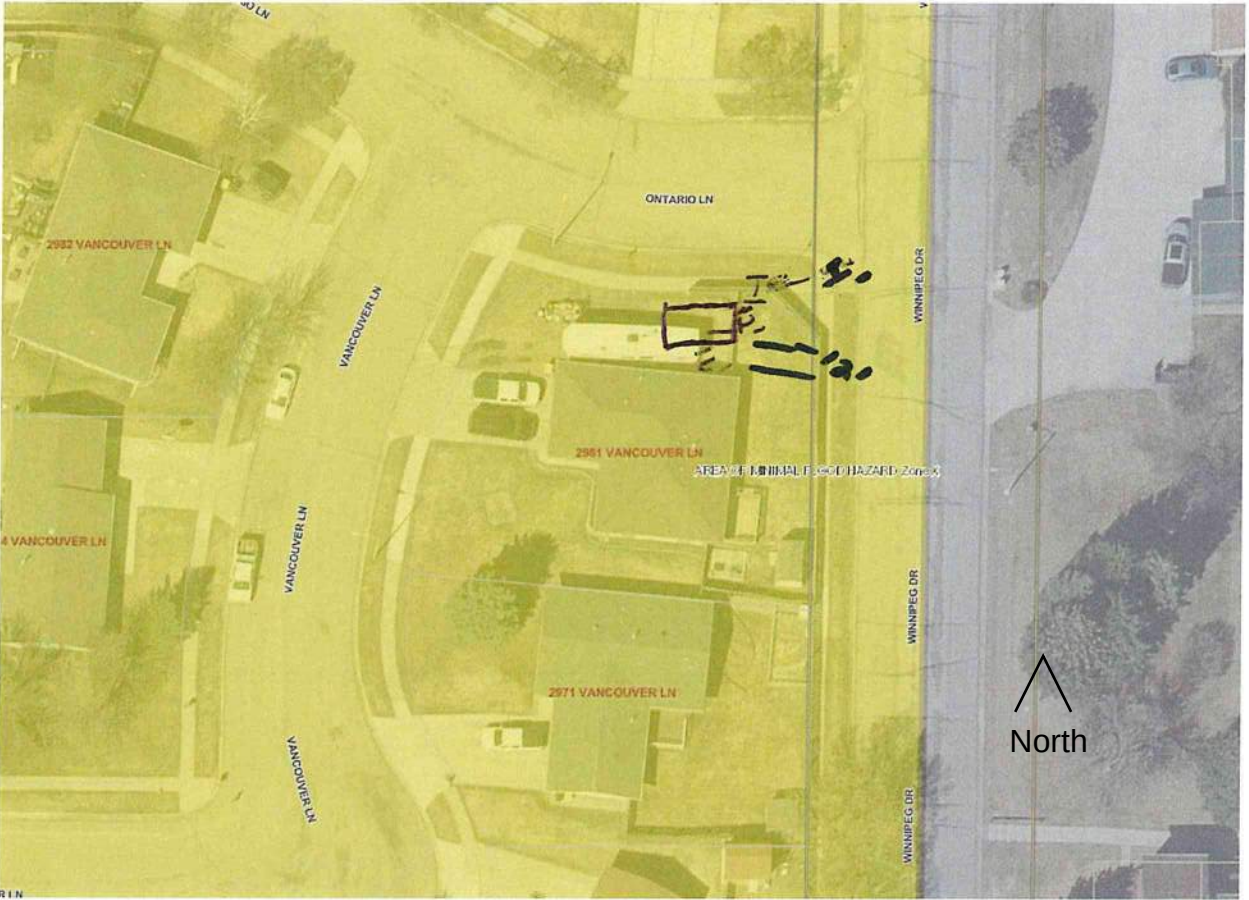
 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Department
Planning Division
June 21, 2021

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There is approx 28' from
Side wall to side of house.
We are requesting 4' from
side wall to shed wall.
and 12' from other shed wall
to House wall.

Thank you



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:

Front Yard Reduction

Applicable Zoning Ordinance:
(Chapter/Section)

H-04-03 Section 7

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.)

according to Bismarck Building codes and Easements, I am not allowed to build within 25 feet of a street front. Unfortunately our property has 3 street fronts and only approximately 7 feet between properties. I would like to file for hardship due to this.

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

Due to the limited space of garage space & our current sheds size and falling apart, we would like to build a shed ample enough for all our stuff & growing aids stuff. currently we are not able to park both vehicles in the garage due to storage shortage.

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

on the north side of our house there is approximately 28 feet from side walk to the side of the house. I am asking for a 4' increase to allow the 12' shed wall and 12' from side of the house for fire purposes.



Permit Inspections City of Bismarck

Permit Number: **BRAC2007-00429**

Description: **CONSTRUCT 8'X 12' STORAGE SHED ON 4"**

Applied: **4/27/2007**

Approved:

Site Address: **2981 VANCOUVER LA**

Issued: **4/27/2007**

Finalized: **5/16/2007**

City, State Zip Code: **BISMARCK, ND 58503**

Status: **CLOSED**

Applicant: **<NONE>**

Parent Permit:

Owner: **<NONE>**

Parent Project:

Contractor: **SELF/OWNER**

Details:

TOTAL AREA: 96 DESCRIPTION OF WORK: CONSTRUCT 8'X 12' STORAGE SHED ON 4" FLOATING SLAB, MUST BE 6' FROM EAVE OF HOUSE.

LIST OF INSPECTIONS

SEQ ID	SCHEDULED DATE	COMPLETED DATE	TYPE	INSPECTOR	RESULT	REMARKS
		5/2/2007	BUILDING FOUNDATION	Rick Wohl	CONVERSION	
Notes: LOCATION OK PER RZ, 2 #3 OK DUE TO SLAB SIZE, NO REQmnt FOR REBAR						
		5/16/2007	BUILDING FINAL**	Rick Wohl	CONVERSION	
Notes: SHED OK						

MEMORANDUM

To: Board of Adjustment

From: Jenny Wollmuth, AICP, CFM, Senior Planner

Item(s): Other Business

Member and Alternate Member Appointment

North Dakota Century Code (NDCC) allows a board of adjustment to request that the Bismarck City Commission appoint an alternate member of the board, who shall sit as an active member when and if a member of the board is unable to serve at any hearing.

During your May 6, 2021 Board meeting, the Board of Adjustment voted unanimously to request the City Commission appoint an alternate member. It was determined that a random selection was as equitable as any means to identify the alternate member. Staff used an online randomization tool to select whom out of the six board members would serve as the alternate. Through this process it was identified that Ken Hoff would serve as the alternate member.

The Bismarck City Commission, at their meeting of June 22, 2021, reappointed Jennifer Clark and Ken Hoff to serve on the Board of Adjustment and that Ken Hoff serve as the alternate member. Their terms will expire in June 2024.

Board Bylaws and Procedural Updates

The Board of Adjustment bylaws and Section 14-06-01 of the City Code of Ordinances (Board of Adjustment / Members) will need to be revised to reflect the North Dakota Century Code requirement of 5 board members and 1 alternate. A copy of the bylaws and Section 14-06-01 are attached for your review. If acceptable, staff will prepare a zoning ordinance text amendment at for consideration at the next Planning and Zoning Commission meeting.

Planning staff will initiate a zoning ordinance text amendment to modify the number of Board members to match the NDCC requirements. Procedural updates such as dates of

quorum calls and future selection of members and alternate members will also be reviewed.

Zoning Ordinance Text Amendments

Keeping of Chickens. The City Commission, at their meeting of June 8, 2021, voted 4 to 1 to deny the request for a public hearing on the zoning ordinance text amendment to revise existing requirements related to keeping chickens within rural residential lots outside of City limits and regulations to allow chickens within the City.

FP – Floodplain (Accessory Structures). The Planning and Zoning Commission, at their meeting of June 23, 2021, approved the zoning ordinance text amendment that would to revise the construction and elevation requirements for accessory structures located within the Special Flood Hazard Area (SFHA) or 100-year floodplain.

The proposed changes would allow for accessory structures less than 600 square feet in area to be constructed below the Base Flood Elevation (BFE), according to floodproofing techniques approved by FEMA. Proposed changes would also allow accessory structures greater than 600 square feet in area to be constructed one foot above the BFE.

Accessory structures are buildings located on the same property as a principal building or house, and the use is incidental to the use of the principal building. These structures are used for parking or storage, represent a minimal investment by owners, and have a low damage potential during a flooding event.

The proposed zoning ordinance text amendment forwarded to the City Commission for their consideration at their July 13th meeting.

Appeal Update

The City Commission, at their meeting of June 8, 2021, upheld the May 6th denial of a variance from Section 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard) to reduce the required side yard setback, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building Lot 23, Block 2, Copper Ridge Subdivision.

Attachments:

1. Section 14-06-01 (Board of Adjustment / Members)
2. Board of Adjustment Bylaws

CHAPTER 14-06 - BOARD OF ADJUSTMENT

14-06-01. Members. The board of adjustment heretofore created by ordinance shall continue in full force and effect. The board of adjustment shall consist of six (6) members, each to be appointed by the board of city commissioners for a term of three (3) years. The board of adjustment shall have all of the powers and duties imposed upon it by the statutes of the State of North Dakota and the ordinances of the City of Bismarck.

(Ord. 5667, 05-27-08)

14-06-02. Powers and Duties. The board of adjustment is an administrative board whose powers and duties are limited generally by the laws of the State of North Dakota, particularly by the powers and duties set forth in this section. The board of adjustment shall not have the power to amend this article on zoning, nor to permit nor prohibit any actions which accomplish an amendment of this article on zoning, nor to permit any action nor fail to prohibit any action which would violate this article. However, it is declared the intent of this section that any actions taken by the board of adjustment in full compliance with the provisions of this section shall be deemed to be administrative actions, and shall not be interpreted as unauthorized amendments of the article. The board of adjustment shall have the following powers and duties:

1. Interpretation. On appeal from an order, requirement, determination or provision made by the Zoning Administrator or other administrative official, or by request from any official, agency or head of the city, the board of adjustment shall decide any question involving the interpretation of any provision of this article. The board of adjustment may, in conformity with this article, reverse, affirm, or modify wholly or in part, or render a decision upon any such appeal or request.

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.

b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.

c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must re-apply.

3. Conditional Variance. In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of the article or preserve the neighborhood or general welfare from injury.

4. Renewal of Certificate of Occupancy for Nonconforming Use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of Section 14-03-09 of this article. In granting such renewal, the board of adjustment shall determine that the temporary continuation will not be injurious to the neighborhood, nor to the public

welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension, if such extension were refused. The board of adjustment may refuse to grant an extension of the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than fifteen (15) days prior to the expiration of the original certificate of occupancy.

5. Renewal of Automatically Revoked Building Permit: Upon appeal by any person holding a building permit automatically revoked by the provisions of Section 14-03-04 of this article, the board of adjustment shall hear and determine whether or not such revoked building permit will be renewed. The board of adjustment shall authorize such renewal only where it specifically finds:

a. Construction of the building has, in fact, been started;

b. Substantial expenditures have been made for such construction; and

c. The plans for building and actual construction of the building are in full compliance with the zoning ordinance in effect at the date of issuance of the building permit, and in full compliance with the building code and any other ordinance of the City of Bismarck.

6. Off-street Parking. The board of adjustment shall, upon application, hear and decide any question relating to the decrease of required off-street parking or off-street loading spaces as set forth in Section 14-03-10 of this article.

7. Airport Zoning. The board of adjustment shall have all powers and duties granted to it by the Bismarck Municipal Airport zoning regulation ordinance.

8. Recommendations to City Planning and Zoning Commission. The board of adjustment is authorized to recommend to the city planning and zoning commission for study or action any changes or amendments to the text or district zoning maps that said board finds desirable. The city planning and zoning commission shall consider

such recommendation and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.

9. Miscellaneous Powers and Duties. The board of adjustment shall have such other powers and duties as may be authorized by this article, or any amendment thereto.

10. Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of North Dakota, this article, or any other ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this article.

Bylaws of the City of Bismarck Board of Adjustment

Article I. Authorization

A. Authority. The Board of Adjustment is established pursuant to Chapter 14-06 of the City of Bismarck Code of Ordinances (Title 14) and pursuant to provisions in the North Dakota Century Code (NDCC) Chapter 40-47.

Article II. Purpose

A. Purpose. The purpose of the Board of Adjustment is to promote the health, safety, and general welfare of the citizens of the City of Bismarck and the City's extraterritorial jurisdictional boundary by hearing and deciding appeals of orders, requirements, and decisions or determinations of an administrative official appropriate under Title 14.

Article III. Membership and Organization

A. Membership. The Board of Adjustment consists of six (6) members, each to be appointed by the Board of City Commissioners for a term of three (3) years. *(Title 14)*

B. Organization. The organization of the Board of Adjustment consists of a chairperson and vice-chairperson selected by the membership who serve at the pleasure of the membership for one year. Nominations and election of officers shall be taken from the floor at the Board of Adjustment's first meeting of the year. If an officer is unable to complete the specified term, a special election shall be held for the completion of the term.

The chairperson shall preside at all Board of Adjustment meetings and review agendas with staff.

The vice-chairperson shall conduct all business delegated by the chairperson, in the absence of the chairperson.

Article IV. Conduct of Members and Ethics

A. General Conduct. Members of the Board of Adjustment shall make every effort to attend all meetings and shall make every effort to represent the interests of all of the citizens of the City of Bismarck and the City's extraterritorial jurisdictional boundary in a fair and impartial manner.

B. Conflict of Interest. A member of the Board of Adjustment who has a direct and substantial personal or financial interest in a matter before the Board shall disclose that fact to the Board and may not participate or vote on that particular matter without the consent of a majority of the other members of the Board present.

C. Removal of Members. The Board of Adjustment may recommend that the Board of City Commissioners remove any member of the Board if that member failed to attend three (3) consecutive regular meetings of the Board of Adjustment or has failed to attend seven (7) regular meetings within one calendar year. The Board of City Commissioners shall make judgment on such matters after receiving a report from the chairperson of the Board of Adjustment.

D. Ex-parte Communication. Ex-parte communication includes any oral or written communication between a member of the Board and any other person interested in an item before or scheduled to be before the Board. Communications on a particular item sent to the Board after the agenda packet has been sent via email or mail may be distributed and announced at the Board of Adjustment meeting. Board of Adjustment members shall comply with applicable City and State open meeting requirements.

Article V. Powers and Duties of the Board

A. Powers and Duties of the Board. The Board of Adjustment has all of the powers and duties confirmed by Chapter 14-06 of Title 14 of the City Code of Ordinances and Chapter 40-47 of the NDCC. These powers and duties include:

1. Interpretation. The Board of Adjustment shall decide any question involving the interpretation of any provision of Title 14. *(Title 14)*
2. Variances. The Board of Adjustment may vary or adjust the strict application of any of the requirements of Title 14. The Board of Adjustment shall prescribe any conditions to the approval of a variance necessary or desirable to carry out the general purposes of the title or preserve the neighborhood or general welfare from injury. *(Title 14)*
3. Parking Determination. The Board of Adjustment shall decide questions of off-street parking and off-street loading in unique situations for any use not specifically mentioned in Title 14, Section 14-03-10(4). *(Title 14)*

Article VI. Appeals to the Board

A. Appeal – How Taken. 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 Title 14. A party may appear at the hearing in person or by agent or by attorney. *(Title 14)*

B. Appeal – Procedure. The Board of Adjustment shall fix a reasonable time for the hearing of an appeal or for action on any matter upon which the Board is required to decide under Title 14 of the City Code of Ordinances and give due notice of the time to interested parties, and make all decisions within a reasonable time. *(Title 14)*

The concurring vote of four (4) members of the board is necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or other official, or to decide in favor of the applicant any matter or to effect any variation from Title 14. *(Title 14)*

C. Appeal to the Board of City Commissioners. A decision of the Board of Adjustment may be appealed to the Board of City Commissioners by either the aggrieved applicant or by any officer, department, board, or bureau of the City by filing the request for appeal, within fifteen (15) calendar days after notice of the decision, with the office of the City Administrator or the Community Development Department. *(Title 14)*

The Board of City Commissioners shall fix a time, within thirty (30) days of receipt of the request for appeal, for the hearing of the appeal and shall give due notice of the hearing to the parties.

Article VII. Findings of Fact

A. Findings of Fact. In accordance with Chapter 14-06 of Title 14, an adjustment or variance in the strict application of any provisions of Title 14 may not be granted by the Board of Adjustment unless the Board finds the following:

1. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act the applicant has taken.
2. That, for reasons fully set forth in the findings of the Board, the circumstances or conditions so found are such that the strict application of the provisions of Title 14 would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the Board of Adjustment is the minimum variance that will accomplish the relief sought by the applicant.
3. That the granting of the variance will be in harmony with the general purposes and intent of Title 14, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Article VIII. Lapse

A. Lapse. A variance granted must be put into use within twenty-four (24) months of the granting of the variance or the variance lapses and the landowner or their agent must re-apply for a variance if the landowner seeks to put the variance into use.

Article IX. Meetings

A. Meetings. The Board of Adjustment's regular meeting time is 5:00pm on the first Thursday of each month in the Tom Baker Meeting Room in the City-County Building. Special meetings may be held at any time and may be called by the chairperson. Special and regular meetings of the Board are open meetings that are open to the general public.

B. Meeting Notice. Notice of the time and place of a hearing shall be sent to the applicant or their agent after a complete application is submitted to staff for action by the Board of Adjustment. Notice of the time, place and request of the Board of Adjustment shall be sent to all known adjacent property owners no later than ten (10) days before to the Board of Adjustment meeting unless specifically approved by the chairperson of the Board.

C. Participation. A Board member may join the meeting by telephone. A member participating by telephone is included in the determination of a quorum and eligible to participate in discussion and voting on all agenda items.

D. Meeting Rules. Unless otherwise specified, Robert's Rules of Order governs the proceedings of the Board of Adjustment.

E. Meeting Documents. All notices, agendas, requests, letters, reports, maps, photographs, staff reports, minutes, and other related items constitute the documents of the Board of Adjustment and shall be maintained in the Community Development Department.

Article X. Staff Responsibilities

A. Staff Responsibilities. The Bismarck Community Development Department shall provide administrative and technical support to the Board of Adjustment.

Article XI. Amendment of Bylaws

A. Amendments. These Bylaws may be amended at any regular or special meeting of the Board of Adjustment, if the proposed amendment has been introduced in writing at least seventeen (17) days before the meeting of the Board. Amendment of the Bylaws requires the affirmative vote of at least four (4) members of the Board.

Adopted this _____ day of _____ Month Year

Board of Adjustment


Chairman

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
May 6, 2021**

The Bismarck Board of Adjustment met on May 6, 2021, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

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

Staff members present were Hilary Balzum – Community Development Administrative Assistant, Brady Blaskowski – Building Official/Floodplain Administrator, Jannelle Combs – City Attorney and Jenny Wollmuth – Senior Planner.

MINUTES:

Chair Marback called for approval of the minutes of the April 1, 2021 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 April 1, 2021 meeting, as presented. With Board Members Clark, Marback, Janssen, Hoff, Wohl and Seifert voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(5) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL / SIDE YARD) – LOT 23, BLOCK 2, COPPER RIDGE SUBDIVISION (5627 KAYLEY DRIVE)

Chair Marback stated the applicants, Aaron Joramo and Jerri Buchmiller, are requesting a variance to reduce the required side yard setback, located along the west side of their property, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building on Lot 23, Block 2, Copper Ridge Subdivision (5627 Kayley Drive). The property is located south of Bismarck, south of 62nd Avenue SE and west of 52nd Street SE, along the south side of Kayley Drive.

Ms. Wollmuth said at the request of staff, the Board of Adjustment, during their April 1, 2021 meeting, continued the public hearing for the proposed variance. Staff indicated to the Board that an error was made and the applicant was notified of the wrong meeting date for the public hearing.

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 RR-Residential zoning district.

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

Ms. Wollmuth said staff recommends reviewing the findings contained in the staff report, identifying any hardship and modifying the findings as necessary to support the decision of the Board.

Chair Marback opened the public hearing.

Chair Marback asked if the building has been proposed where it is because of the drain field for the septic system.

Mr. Joramo said that is correct and that the septic system runs southwest, and then provided pictures of the proposed location. These are attached as Exhibit A.

Mr. Janssen asked why the drain field was placed where it is. Mr. Joramo said he is unsure as they are the second owners of the property and were not able to locate any as-built drawings or other specifications for the drain field from when it was originally permitted and installed. He said the hill on his lot contours to the south so likely the lowest area was chosen for the drain field location.

Mr. Janssen asked if the proposed accessory building could be placed behind the drain field. Mr. Joramo said they do not want to have to drive over the drain field to get to the accessory building or place it any closer to their house.

Mr. Seifert said the variance is supposed to be the minimum variance needed and asked why the proposed accessory building could not be built one foot narrower or smaller so that it would fit on the property according to the zoning requirements.

Mr. Joramo said the building was pre-built and has already been delivered. He said it would be a pole style building and also placed in line with existing utility lines.

Mr. Hoff asked how long a drain field typically is. Mr. Janssen said it depends on the size of the house as well as the design of the property.

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

Mr. Janssen said they must identify a hardship. As the proposed building could be moved or reduced in size, he has not seen anything that dictates the need for this variance.

Mr. Wohl said he feels there are other options and a variance is not supposed to be granted based on economic inconveniences.

MOTION: A motion was made by Mr. Seifert to deny the request for variance to reduce the required side yard setback, located along the west side of their property, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building on Lot 23, Block 2, Copper Ridge Subdivision (5627 Kayley Drive). The motion was seconded by Mr. Wohl and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved and the variance request was denied.

OTHER BUSINESS

MEMBER TERMS AND APPLICATION PROCESS

Chair Marback said in 2008 the Board of Adjustment added a sixth member because of difficulties they were having consistently obtaining a quorum at that time. He said North Dakota Century Code states that the Board of Adjustment consist of 5 members, and that if a city chooses a 6th member could be added to the Board of Adjustment as an alternate to serve on an as-needed basis. Chair Marback said those members whose terms are expiring at the end of May should re-apply and the City Commission should be the entity to determine who the alternate member is. Chair Marback said he does not feel it is fair to limit the alternate position to those two members whose terms are expiring in May.

Mr. Hoff asked if the alternate would still receive the meeting information and attend the meetings.

Ms. Wollmuth said she would expect that staff would share the meeting information with all members and would make quorum calls the day prior to the meeting to ensure the alternate is aware well in advance if their presence is needed.

Mr. Hoff asked if this is fair to those members who are up for reappointment and asked what the suggestions of the City Attorney might be.

Ms. Combs said it would be suggested to the City Commission what the request of this Board is as a whole. She said the Board is to consist of five members and have one alternate, but only five members can vote and a majority of four votes needed to approve any variance. She said if a consensus can be found here that would be best and the City Commission would decide based on the recommendation of this Board.

Mr. Janssen asked if at some point an alternate could move into a permanent member position. Ms. Wollmuth said that could be a possibility the next time a position were to come open.

Mr. Wohl asked what would happen if the City Commission appointed a member to the alternate position that wants to be a permanent member.

Ms. Combs said she is assuming the City Commission would value the recommendation this Board and how this Board would like to proceed with the selection of the alternate. She also stated that because the appointment is not of a property right, there is no due process to appeal that decision.

Mr. Hoff asked if they could move to having only five members on the Board again and not have an alternate

Ms. Wollmuth said it is in their best interest to keep six members in order to avoid the issue of not being able to obtain a quorum.

Chair Marback said they can explore the possibility of a bill to change the member number requirement outlined in the North Dakota Century Code.

Ms. Combs said it was also suggested by staff that the members could take turns utilizing the alternate in order to balance the members amongst the meetings throughout the year.

Mr. Wohl said it is not likely the alternate would be needed for every meeting.

Chair Marback gave a history of the attendance issues of the Board of Adjustment and what prompted the change to be made in the first place.

Ms. Clark stated that legislation in 2023 could be considered to increase the number of Board of Adjustment members as well as the approval and quorum requirement of four members reduced to three.

MOTION: A motion was then made by Mr. Seifert for the City Commission to choose the members to fill the open terms and then choose the alternate member. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved.

Mr. Hoff asked if the Chair would also have to be determined at that time. Ms. Clark said the Chair and Vice Chair are determined by the Board of Adjustment.

Mr. Wohl asked if all of the current members should share their board applications to be forwarded for consideration. Ms. Wollmuth said those applications can be revised and resubmitted to her and she will share them for consideration by the City Commission.

MOTION: A motion was made by Mr. Hoff that a determination be made from the applicants that apply who the two members are and then which of the six members would be the alternate member. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved.

BISMARCK COMMUNITY DEVELOPMENT MAP

Ms. Wollmuth said a new interactive map is being made available which shows Community Development projects within the last two years. She said this is going to be a great way to share information, and while staff will continue to notify adjacent property owners, this makes information available to those who might not be in the notification boundary but who are still interested in a project. She said Daniel Nairn and Ben Ehreth have worked closely with the City GIS Department to make this map available.

Chair Marback asked where the zoning ordinance text amendment related to the floodplain requirements is at in the process. Ms. Wollmuth said it has been drafted based on the accessory building construction needs in the Special Flood Hazard Area by creating a tiered system of requirements. She said it is being reviewed by FEMA and said it is expected that the Bismarck Planning and Zoning Commission will consider the draft ordinance at their May 26th meeting.

Mr. Janssen said he feels a good balance has been found in the stakeholder's group to help a lot of people. He said this will be a good thing.

Chair Marback thanked Mr. Janssen for his involvement in that group and said he knew he would do well in it.

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:50 p.m. to meet again on June 3, 2021.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair