



BOARD OF ADJUSTMENT

MEETING AGENDA

December 2, 2021

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

MINUTES

1. Consider approval of the minutes of the August 5, 2021 meeting of the Bismarck Board of Adjustment

PUBLIC HEARINGS

2. **Section 14-011-18 of the City Code of Ordinances (PUD – Planned Unit Development)** Lot 22, Block 1, Misty Waters (6134 Carefree Circle) | VAR2021-008

Owner: Jay and Jackie Lundstrom

Applicant: Dave Meyer, Artistic Homes

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



OTHER BUSINESS

3. Other Business

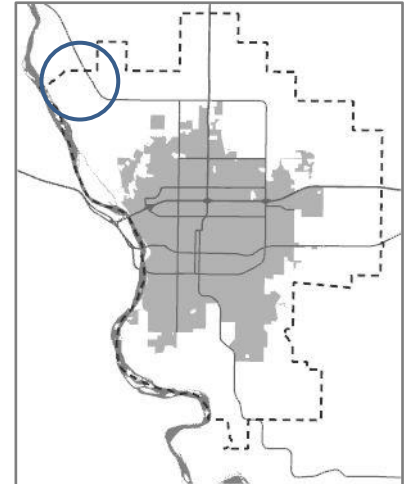
ADJOURNMENT

4. **Adjourn:** The next regular meeting date is scheduled for **January 6, 2022**

Enclosures: Meeting Minutes of August 5, 2021

Project Summary

<i>Title:</i>	Lot 22, Block 1, Misty Waters (6134 Carefree Circle)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Jay and Jackie Lundstrom
<i>Project Contact:</i>	Dave Meyer, Artistic Homes
<i>Location:</i>	Northwest of Bismarck, west of River Road and west of Burnt Creek Loop, at the west end of Carefree Circle
<i>Request:</i>	Section 14-04-18 (Planned Unit Developments)



Staff Analysis

Jay and Jackie Lundstrom are requesting a variance to allow the southwest corner of the existing single-family dwelling under construction to project approximately 6 feet beyond the rear yard setback as specified in the Planned Unit Development (PUD) for Misty Waters, which was established in 2006 in accordance with Section 14-04-18 of the City Code of Ordinances (Planned Unit Developments).

Permit Information

A building permit was issued to construct a single-family dwelling in early July 2021. According to the lot survey which was stamped by a registered land surveyor and submitted with the application, the dwelling met all setback requirements outlined in the PUD for Misty Waters.

The footings and foundation for the dwelling were inspected in mid-July and subsequently poured. A plumbing permit was issued and underground plumbing was also installed and inspected in mid-August. The building permit, plumbing permit, associated inspection notes and the lot survey are attached.

Prior to framing the dwelling, it was discovered that the lot survey submitted with the building permit application was incorrect, and the southwest corner of the building was located approximately 6 feet beyond the rear yard setback line as defined in the PUD for Misty Waters.

Planned Unit Developments

A PUD is a unique and specific zoning district created for properties to encourage flexibility of uses and dimensional and development standards that may not be available by utilizing standard zoning districts outlined in the City's zoning ordinance.

The original PUD for Misty Waters was approved in 2005 and amendments to the PUD were made in 2006, 2017 and 2020. The 2006 amendment to the PUD specified the rear yard setbacks for lots adjacent to the bay at elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR. The PUD is attached for your review.

(continued)

Letter of Map Revision (LOMR)

A Letter of Map Revision (LOMR) is a formal amendment to revise the effective FEMA Flood Insurance Rate Map (FIRM) for a community and is founded on engineering data reviewed and approved by FEMA. A LOMR can be approved for a number of reasons including grading and adding fill material to a property.

Additional Information

The public has been duly notified of this request, with 131 letters mailed to the owners of nearby properties on November 19, 2021.

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 2 of Ordinance 5435 (Misty Waters Planned Unit Development/Single-family Residential Development Standards), as amended states, "...the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR...." According to the lot surveys submitted with the application, the southwest corner of the single-family dwelling under construction projects approximately 6 feet beyond this line.

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 PUD – Planned Unit Development 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.

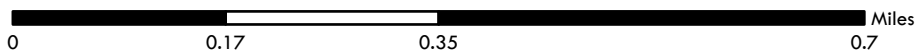
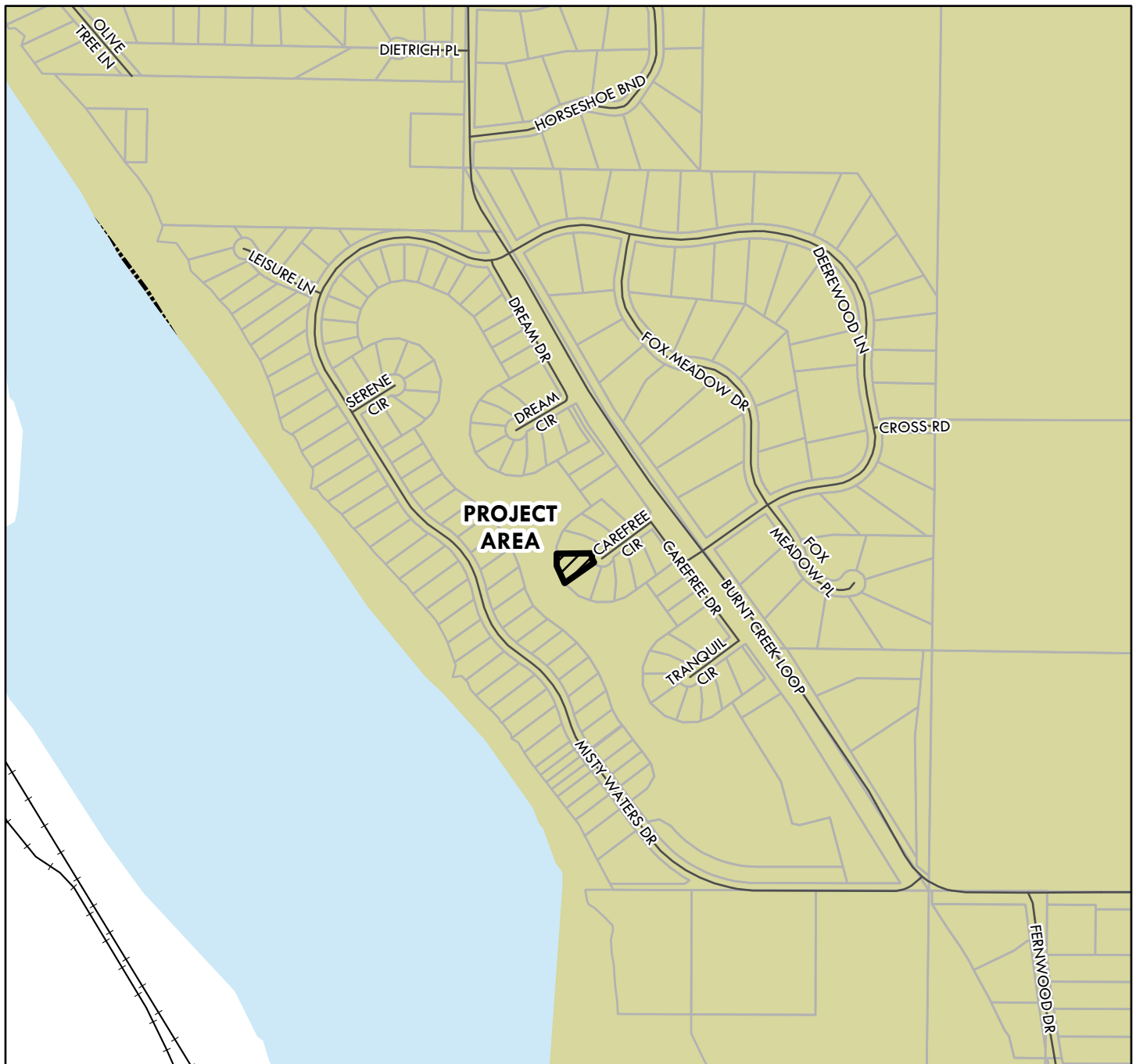
Staff Recommendation

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 Permit (Lot Survey and Inspection Notes)
4. Plumbing Permit and Inspection Notes
5. Revised Lot Survey (NLC Consulting)
6. Revised Lot Survey (Swenson Hagen & Co)
7. Misty Waters PUD
8. Written Statement of Hardship

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

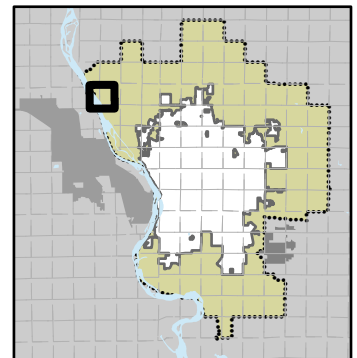


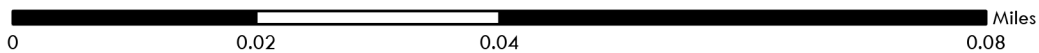
-  Bismarck ETA Jurisdiction
-  County Outside ETA

City of Bismarck
Community Development Department
Planning Division
November 18, 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.*



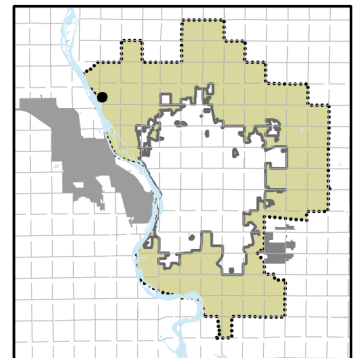


 Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Department
Planning Division
November 23, 2021

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.





BUILDING RESIDENTIAL
NEW CONSTRUCTION

Permit: BRES2021-0542
Approved By: MJK
Issued Date: 7/1/2021
Expiration Date: 1/15/2022
Permit Fee: \$b \$

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: LUNDSTROM, JAY T & JACKIE L

Contractor: ARTISTIC HOMES INC

Address: 6134 CAREFREE CIR

Phone Number: [REDACTED]

Location: BISMARCK ETA

Front Yard Set Back: 25'

Property Number: 31-139-81-60-01-220

Rear Yard Set Back: LOMR-F CASE NO: 05-08-0351A

Legal Description:

Side Yard Set Back: 10'

Easements: - 10' UTILITY EASEMENT FRONT (EAST)
- 10' DRAINAGE AND ACCESS EASEMENT SIDE (SOUTH)
- 20' DRAINAGE EASEMENT REAR (WEST)

Description of Work: SINGLE FAMILY DWELLING

Additional Notes:

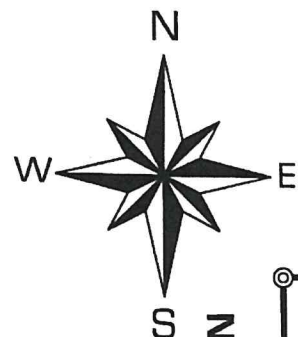
Work under this permit must commence within 180 days of permit issuance. Permittee must comply with all codes and ordinances applicable to work. Issuance of the permit does not grant any authorities to erect, modify, or use any structure in violation of any code or ordinance. All required inspections, 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.

**** Survey submitted with
building permit application ****

LOT SURVEY EXHIBIT ATTACHMENT

LOT 22 OF BLOCK 1, MISTY WATERS
BURLEIGH COUNTY, NORTH DAKOTA
6134 CAREFREE CIRCLE

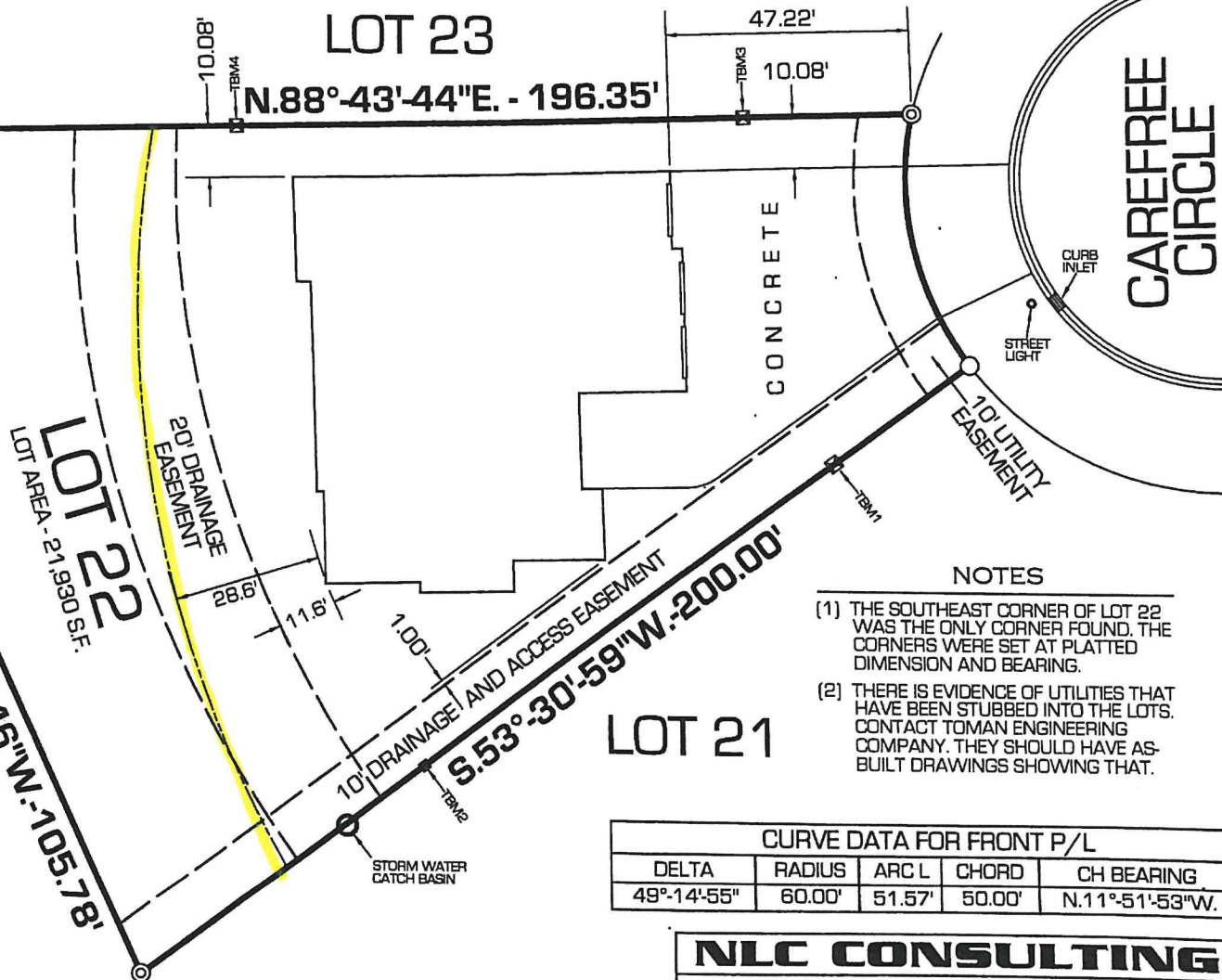
DAVE MEYER, ARTISTIC HOMES, INC.- BUILDER



LEGEND
 ○ DENOTES FOUND LOT CORNER
 ⊙ DENOTES SET LOT CORNER
 ⊠ DENOTES TBM LOCATIONS
 --- DENOTES LOMA BOUNDARY
 CASE NO. 05-01A8-035
 DATED MAY 19, 2005

00' 10' 20' 30' 40' 50'

SCALE: 1" = 30"
MAY 01, 2021



NOTES

- (1) THE SOUTHEAST CORNER OF LOT 22 WAS THE ONLY CORNER FOUND. THE CORNERS WERE SET AT PLATTED DIMENSION AND BEARING.
- (2) THERE IS EVIDENCE OF UTILITIES THAT HAVE BEEN STUBBED INTO THE LOTS. CONTACT TOMAN ENGINEERING COMPANY. THEY SHOULD HAVE AS-BUILT DRAWINGS SHOWING THAT.

CURVE DATA FOR FRONT P/L

DELTA	RADIUS	ARC L	CHORD	CH BEARING
49°-14'-55"	60.00'	51.57'	50.00'	N.11°-51'-53"W.

NLC CONSULTING

LAND PLANNING AND SURVEYING CONSULTANTS
BISMARCK, NORTH DAKOTA



Permit Inspections

City of Bismarck

Permit Number: **BRES2021-0542**

Description: **SINGLE FAMILY DWELLING**

Applied: **6/28/2021**

Approved: **7/1/2021**

Site Address: **6134 CAREFREE CIR**

Issued: **7/1/2021**

Finalized:

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

Status: **ISSUED**

Applicant: **ARTISTIC HOMES INC**

Parent Permit:

Owner: **LUNDSTROM, JAY T & JACKIE L**

Parent Project:

Contractor: **ARTISTIC HOMES INC**

Details:

LIST OF INSPECTIONS

SEQ ID	SCHEDULED DATE	COMPLETED DATE	TYPE	INSPECTOR	RESULT	REMARKS
			BUILDING FRAMING	Joey Houle		
Notes:						
			BUILDING THERMAL ENVELOPE	Joey Houle		
Notes:						
			BUILDING FOUNDATION	Unassigned		
Notes:						
	7/15/2021	7/15/2021	BUILDING FOOTING	Joey Houle	PASS	R2 P7/16 400.4255 AC
Notes:						
Setbacks and footing construction is good.- Pass						
	7/19/2021	7/19/2021	BUILDING FOUNDATION	Joey Houle	PARTIAL APPROVAL	R NOW P TUES 8AM, 400-4255 MF
Notes:						
GR installed in N wall of garage Has a foundation wall that isn't completed at time of inspection. Will have it ready 7-21-21. SW side of house.						
1			BUILDING AS-BUILT ELEVATION	Brady Blaskowski		
Notes:						
2			BUILDING FINAL**	Jordan Singer		
Notes:						



BUILDING PLUMBING
RESIDENTIAL

Permit: BPLB2021-0371
Approved By: MIFI
Issued Date: 8/19/2021
Expiration Date: 2/15/2022
Permit Fee: 91.7

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: LUNDSTROM, JAY T & JACKIE L

Contractor: ROCK RIDGE PLB DBA ROCK RIDGE CONST

Address: 6134 CAREFREE CIR

Contractor Address: 314 PARKRIDGE LA

Location: BISMARCK ETA

Phone Number: [REDACTED]

Property Number: 31-139-81-60-01-220

Bid Amount: 39850

Legal Description:

Description of Work: UNDER AND ABOVE GROUND PLUMBING

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 Inspections City of Bismarck

Permit Number: **BPLB2021-0371**

Description: **UNDER AND ABOVE GROUND PLUMBING**

Applied: **8/19/2021**

Approved: **8/19/2021**

Site Address: **6134 CAREFREE CIR**

Issued: **8/19/2021**

Finalized:

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

Status: **ISSUED**

Applicant: **ROCK RIDGE PLB DBA ROCK RIDGE CONST**

Parent Permit:

Owner: **LUNDSTROM, JAY T & JACKIE L**

Parent Project:

Contractor: **ROCK RIDGE PLB DBA ROCK RIDGE CONST**

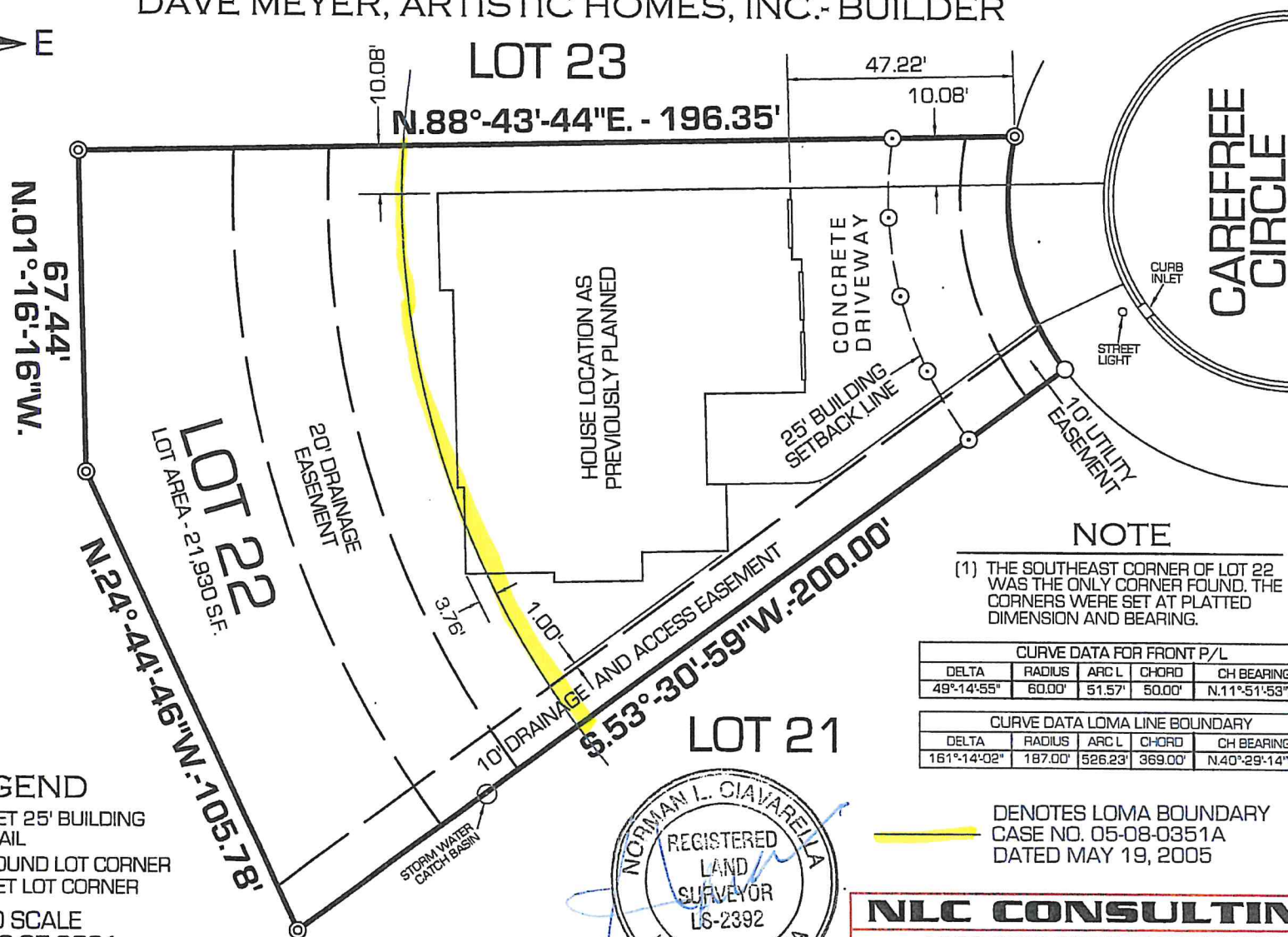
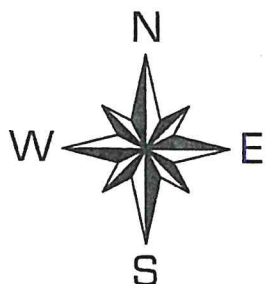
Details:

LIST OF INSPECTIONS

SEQ ID	SCHEDULED DATE	COMPLETED DATE	TYPE	INSPECTOR	RESULT	REMARKS
1	8/19/2021	8/19/2021	PLUMBING UNDERGROUND	Jordan Singer	PASS	527-9553 MF
Notes: Ug-ok						
2			PLUMBING ABOVEGROUND	Jordan Singer		
Notes:						
3			PLUMBING FINAL**	Jordan Singer		
Notes:						

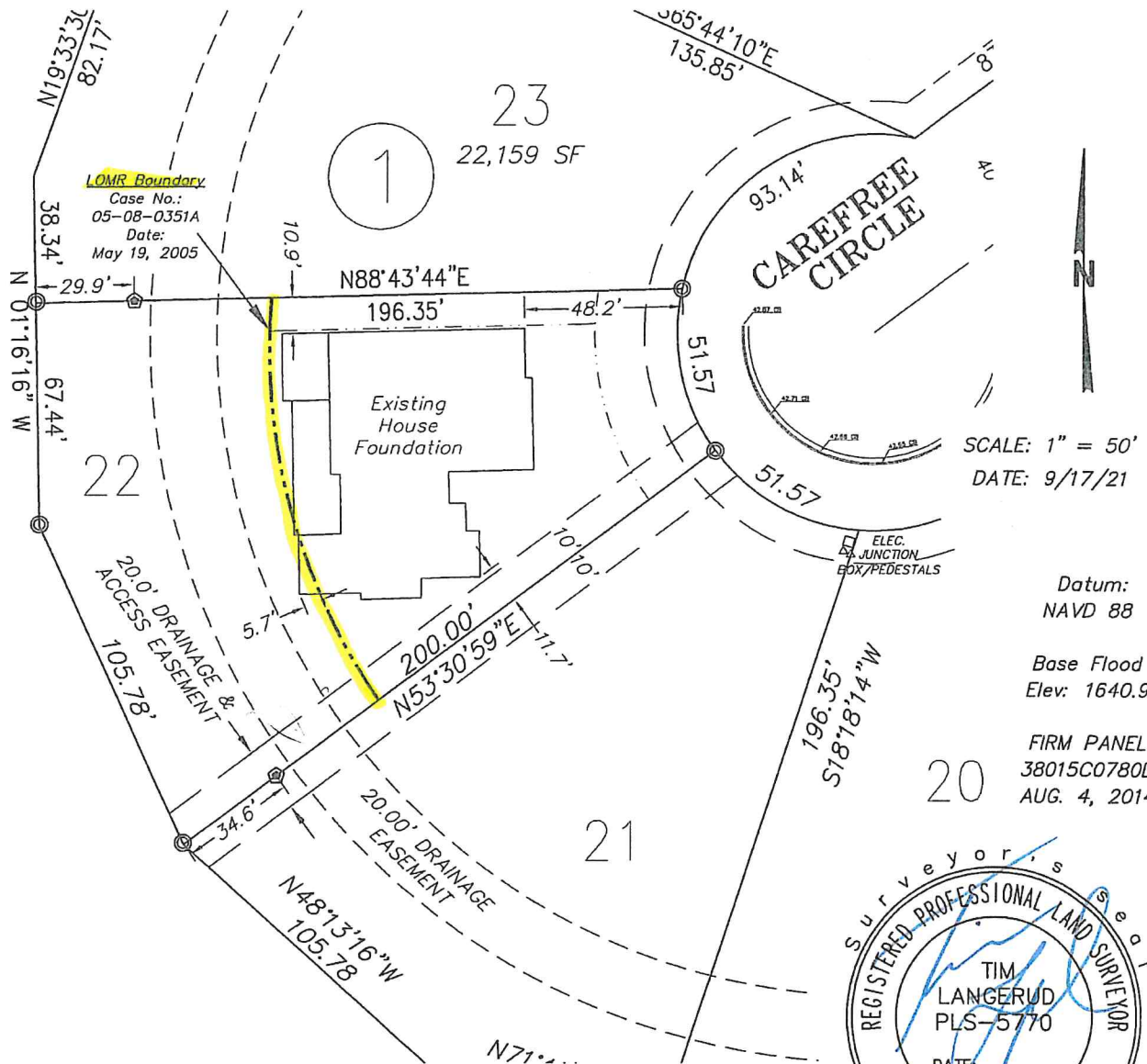
**** Survey submitted after
building permit issued and
foundation poured ****

LOT SURVEY EXHIBIT ATTACHMENT
LOT 22 OF BLOCK 1, MISTY WATERS
BURLEIGH COUNTY, NORTH DAKOTA
6134 CAREFREE CIRCLE
DAVE MEYER, ARTISTIC HOMES, INC.- BUILDER



LOT SURVEY EXHIBIT

LOT 22 BLOCK 1
 SUBDIVISION Misty Waters
 ADDRESS 6134 Carefree Circle
 BUILDER Artistic Homes INC



- ⊙ FOUND MONUMENT
- ⊙ SET MONUMENT
- BUILDING SETBACK OR LOMR STAKE
- ⊙ FOUND MONUMENT ON PROPERTY LINE



SWENSON, HAGEN & COMPANY P.C.

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

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



NOTES

THE BUILDING SETBACK LINES SHOWN ARE TYPICAL, THERE MAY BE OTHER BUILDING RESTRICTIONS, COVENANTS OR INTERPRETATIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING DIMENSIONS AND VERIFYING THE BUILDING SETBACKS WITH THE APPROPRIATE APPROVING AUTHORITIES. DIMENSIONS ARE FROM PLAT. BUILDING AS SHOWN HAS BEEN FIELD SURVEYED.

FAXED OR EMAILED TO:
 BUILDER OR OWNER

DATED:
 9-17-2021

**MISTY WATERS PLANNED UNIT DEVELOPMENT
ORDINANCE NO. 5435 (Adopted June 14, 2005)
MAJOR PUD AMENDEMNT (Adopted August 23, 2006)
MAJOR PUD AMENDMENT (Adopted October 25, 2017)
MAJOR PUD AMENDMENT (Adopted October 28, 2020)**

WHEREAS, Ordinance No. 5435 was adopted by the Board of City Commissioners on June 14, 2005; and

WHEREAS, Ordinance No. 05-03 was adopted by the Board of County Commissioners on June 6, 2005; and

WHEREAS, Section 1(2) of both ordinances indicates that this PUD shall only be amended in accordance with the provisions of Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments); and

WHEREAS, the PUD was amended on August 23, 2006 at the Misty Waters LLC to modify the location and density of residential uses, the location of commercial uses, and the setback around the bay; and

WHEREAS, the PUD was amended on October 25, 2017 to clarify language relating to multi-family residential development within the PUD; and

WHEREAS, Lot 84, Block 1 and Lot 40, Block 3 are being replatted as Misty Waters First Replat, which will replace multi-family residential uses within a portion of the development with single-family uses.

NOW, THEREFORE, BE IT RESOLVED by the Bismarck Planning and Zoning Commission of the City of Bismarck, North Dakota, a municipal corporation, that the request to amend the Planned Unit Development for the following described property:

Lots 1-~~8483~~, Block 1; Lots 1, Block 2; Lots 1-~~4039~~, Block 3; and Lot 1, Block 4; Misty Waters and Lots 1-3, Block 1 and Lots 1-3, Block 2, Misty Waters First Replat

is hereby approved and this PUD is now subject to the following development standards:

1. Uses Permitted. Uses permitted include a maximum of 145 129 residential units (115 121 single-family residential units and up to 30 two-family residential units) to be constructed in condominium associations with two units per building or as twinhome/townhouse projects with mutual easements and obligations with two units per building; water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/convenience store with a two-bay boat repair facility, and a restaurant/bar; marina parking facilities; parking facilities for winter storage of marine boats and pontoons; and a public boat ramp with parking to be deeded to Burleigh County.

Any change in the proposed uses within the PUD from that indicated herein will require an amendment to this PUD.

2. *Single-Family Residential Development Standards.* Single family residential development shall be located on Lots 2–81, Block 1 and Lots 2- 37, Block 3, Misty Waters and Lots 1-3, Block 1 and Lots 1-3, Block 2, Misty Waters First Replat (~~115~~ 121 lots with one dwelling unit per lot); the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 40 feet on Burnt Creek Loop, 35 feet on Misty Waters Drive and 25 feet on the other interior roadways; the minimum side yard setback shall be 10 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100 feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 30%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

3. *Multi-family or Two-family Residential Development Standards.* Multi-family or two-family residential development shall be located on the northerly 573.16 feet of the easterly 177.91 feet of Lot 2 and all of Lots 82-~~84~~83, Block 1, and Lots 38-~~40~~39, Block 3 (~~three~~ separate parcels with the option of a separate condominium-association for each parcel or a twinhome/townhouse project with mutual easements and obligations for each parcel and with up to fifteen buildings with no more than two units in each building; the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 35 feet; the minimum side yard setback shall be 15 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100 feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 40%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the

application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

4. *Commercial Development Standards.* Commercial development shall be located on Lot 2 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 and shall be limited to water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/ convenience store, a two-bay boat repair facility, and a restaurant/bar. The minimum front yard setback shall be 40 feet; the minimum side yard setback shall be 20 feet; the minimum rear yard setback shall be 30 feet; the maximum building height shall be 35 feet; and the maximum lot coverage shall be 70%. Commercial building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Parking areas for commercial uses shall be provided in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on the square footage and uses. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. Any change to the uses or building setbacks that are inconsistent with these standards will require an amendment to this PUD. Any activities requiring a special use permit, such as gas dispensing/filling station or liquor sales, shall be subject to the requirements of Section 14-03-08 of the City Code of Ordinances (Special Uses). Any liquor sales will also be subject to the standards agreed to by Burleigh County and the developer in conjunction with liquor licensing.

5. *Marina Parking Facilities.* Marina parking facilities, including parking facilities for winter storage of marine boats and pontoons, shall be located on Lot 1, Block 1, in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on a ratio of one parking space per 1.5 boat slips. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. A marina restroom and concession facility may be constructed on Lot 1, and each shall be no larger than 500 square feet in area, no more than one story in height, be architecturally similar to other commercial buildings in the development and be subject to the same development standards as outlined for commercial uses. Any changes to the location of marine parking facilities will require an amendment to this PUD.

6. *Public Boat Ramp.* A public boat ramp and parking facilities shall be located on Lot 1, Block 4. Said boat ramp and parking facilities shall be developed in accordance with the agreement between the Developer and Burleigh County. Upon conveyance of the property to Burleigh County, the County may construct other complementary facilities, such as restrooms, fish cleaning stations, and picnic shelters.

7. *Signage.* Development identification signage may be installed on Lot 1, Block 2, in accordance with the requirements of Section 14-03-05(9) of the City

Code of Ordinances (Residential Area Identification Signs). Signage for the commercial uses on Lot 2, Block 1, shall be limited to one pylon sign no more than 35 feet in overall height with a face not exceeding 96 square feet, one monument sign with a face not exceeding 48 square feet, and up to two wall signs per building (one facing the marina and one facing the entrance to the commercial area) in accordance with the provision of Chapter 4-04 of the City Code of Ordinances (Signs and Outdoor Display Structures).

8. *Landscaping.* Landscaping and buffer yards shall be provided in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). The perimeter parking lot landscaping requirements for the marina parking facilities on Lot 1, Block 1 and the commercial uses on Lot 2 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 may be modified by the City Forester and/or City Planner to recognize the setting of the development and to incorporate deer and drought-resistant plant materials, provided the overall intent of the landscaping requirements, if not the specific plant quantities, are met.

9. *Common Elements.* Maintenance of all common elements, including the bay/inlet (Lot 85, Block 1) and open space lots (Lot 1, Block 2 and Lot 1, Block 3), shall be the responsibility of the property owner's association.

10. *Lot Modifications.* Any subsequent modification of lots shall be subject to the requirements of Section 14-09-02 of the City Code of Ordinances.

11. *No-Build Easement.* A no-build easement is shown on the face of the plat of Misty Waters over a portion of Lots 1 and 2, Block 1. The intent of this easement is to prohibit construction of structures within this area, as it is part of the Northern Bridge Corridor. The easement reserves the area for the future bridge and related roadways, but does not dedicate the property for this purpose.

12. *Changes.* This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major changes require a public hearing and a majority vote of the Bismarck Planning & Zoning Commission.



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)	Lot 22 Block1 Misty Waters Subdivision, 6134 Carefree Circle
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.)	
On April 22, 2021, NLC Consulting presented Artistic Homes a detailed Lot Survey for 6134 Carefree Circle. This exhibit noted that the structure was placed within the front, side and rear setbacks, and clear of drainage and maintenance easements as required by Bismarck building ordinances and Misty Waters Planned Unit Development #5435. A City of Bismarck building permit was issued on July 1. The footings, frost walls, rough plumbing, HVAC, and concrete flatwork were completed. Prior to beginning framing, it was discovered the building was not in compliance with the LOMR setback in above noted PUD. Construction activities have ceased pending a variance decision. Multiple surveys have concluded that the initial survey was indeed incorrect. The noted discrepancy creates an approximate fifty-four (54) square foot encroachment to the Southwest corner of the structure to the LOMR setback as required by the PUD for the Misty Waters Subdivision.	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
Previously approved residence foundations would need to be removed. This demolition work would cause additional disturbances to the neighboring properties and may create possible erosion issues to Misty Waters bay property.	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
The variance would allow the structure to be completed as previously approved. No additional variances will be need to be utilized on this property.	

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 5, 2021

The Bismarck Board of Adjustment met on August 5, 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. Chairman Marback presided and was present in the Tom Baker Meeting Room.

Members present were Jennifer Clark, Curtis Janssen, Michael Marback, Chris Seifert and Rich Wohl.

Staff members present were Brady Blaskowski, Building Official/Floodplain Administrator, Jannelle Combs – City Attorney, Jenny Wollmuth – Senior Planner and Anton Sattler – Environmental Health Administrator.

MINUTES:

Chair Marback called for approval of the minutes of the July 1, 2021 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Wohl to approve the minutes of the July 1, 2021 meeting, as presented. With Board Members Clark, Janssen, Marback, Seifert, and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-03(6) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL / LOT COVERAGE) – PART OF LOT 3, BLOCK 6, NORTHERN PACIFIC ADDITION (707 NORTH WASHINGTON STREET)

Ms. Wollmuth stated the applicant, Sherri Potter, is requesting a variance to increase the maximum lot coverage from 30% to 36% in order to demolish an existing 9'5"x17'3" attached garage and construct a 12'x24' addition with a garage to the existing single-family dwelling.

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 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.

Ms. Wollmuth said the applicant was present, along with her contractor and that staff recommends reviewing the findings contained in the staff report, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Mr. Janssen asked if the Board has allowed variances in the R5 – Residential zoning district due to unique situations such as this.

Ms. Wollmuth said that she does recall a few variances in the past years for additions that would encroach into side yard setbacks and or increase the lot coverage for properties. These variances were in older areas of town where the lots are smaller.

Chair Marback added that he recalls about four to five variances that have been approved in similar situations.

Chair Marback called the applicant and contractor forward and asked if there was anything they would like to add that was not in their packets.

Ms. Potter said the reason for the addition would be to have a laundry room on the main floor, making mobility easier for her due to ankle and knee surgeries.

Todd Freitag, the contractor said he would square things off, make the residence a rectangle shape, and feels the proposed addition would enhance the surrounding community. He also stated that due to the very steep steps within the existing house the proposed addition would make it possible for Ms. Potter to remain in her house longer and be safer.

Mr. Janssen asked if the addition includes the garage.

Mr. Freitag stated it is basically just room for more storage, as she does not have much of a garage right now, and although he would like to get her a garage there is just no space for it.

Chair Marback opened the public hearing.

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

MOTION: A motion was made by Mr. Seifert to approve the request for a variance from Section 14-04-03(6) of the City Code of Ordinances (R5 – Residential / Lot Coverage) to increase the maximum lot coverage from 30% to 36% in order to demolish an existing 9'5"x17'3" attached garage and construct a 12'x24' addition with a garage to the existing single-family dwelling based on the fact that this is a very small lot and that is a hardship, and he thinks it is necessary for reasonable use of the land. The motion was seconded by Mr. Wohl and with Board Members Clark, Janssen, Seifert, Wohl and Marback voting in favor of the motion, the motion was unanimously approved and the variance request was approved.

VARIANCE FROM SECTION 14-04-19(6)(b)(5)(a) OF THE CITY CODE OF ORDINANCES (FP-FLOODPLAIN DISTRICT) – LOT 1 LESS THE EAST 40 FEET, BLOCK 7, FOX ISLAND SECOND SUBDIVISION (3005 DEER LODGE DRIVE)

Ms. Wollmuth stated the applicant, Don Roloff, is requesting a variance to allow the construction of an addition to an existing single-family structure, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, to be constructed below the elevation requirement outlined in the City zoning ordinance.

Ms. Wollmuth gave an overview of the request, including the following findings for 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 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 also included the following findings for a floodplain variance:

1. The proposed accessory building may increase flood levels during the base flood discharge.
1. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
2. The applicant has not shown good and sufficient cause for granting the variance.
3. A failure to grant the variance would not result in exceptional hardship to the applicant.
4. 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.

Ms. Wollmuth said the applicant was present and available for any questions. She stated the staff recommends reviewing the findings contained in the staff report for both a standard variance as well as a floodplain variance, identifying any hardship and modifying the findings as necessary to support the decision of the Board.

Ms. Clark asked if there was any insight as to how this structure was built with the garage so low.

Ms. Wollmuth stated the Building Official is present and may be able to provide more history. She added that in 2007 our regulations were not as they are today.

Mr. Blaskowski stated that the elevation of the single-family dwelling is just under a foot below the base flood elevation, and the zoning ordinance does allow for an addition to be added unless it is at the same elevation as the home, and not a substantial improvement. Mr. Blaskowski added that the living portion of the attached garage meets the elevation requirements but as the attached garage is below the base flood elevation a variance for the proposed addition is required.

Mr. Roloff informed the board that the size of the addition would be 12x22, nothing substantial.

Mr. Wohl asked what was between the elevation change between home and garage, such as a step or ramp.

Mr. Roloff said in 2007 it was all on one level but the outside walls of the attached garage were constructed in such a way that he would have had to go to short radius rails for the garage doors which did not work well at that time. He came to the city to ask if he could drop the elevation so that he could use full radius rails for his garage doors, which he received approval for. *Secretary's note, a variance to drop the elevation of the attached garage was not requested of nor approved by the Board of Adjustment.*

Chair Marback opened the public hearing.

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

Ms. Clark asked for clarification on what granting this floodplain variance would do to our standing for flood status.

Mr. Blaskowski said that it is uncertain as to what would happen. All variances that are granted by the Board of Adjustments are submitted to FEMA for their review. He can say that this specific variance is in regards to the City of Bismarck's minimum standards, which is more restrictive than FEMA's regulations.

Mr. Janssen asked that if an addition was put on the existing home, which was built theoretically correct, if it would be less likely to be flagged by FEMA than if the addition were to be dropped lower.

Mr. Blaskowski said this is correct, that it would affect us in a different way.

MOTION: A motion was made by Mr. Janssen to approve the request for a variance from Section 14-04-19(6)(b)(5)(a) of the City Code of Ordinances (FP-Floodplain District) based on the exceptional topographical condition where there is an existing structure that met the requirements when it was built and the extension would meet all the other criteria for a variance. He added that

his hardship reasoning in modification includes all the floodplain findings. The motion was seconded by Ms. Clark and with Board Members Clark, Janssen, Marback, Seifert, and Wohl voting in favor of the motion, the motion was unanimously approved and the variance was approved.

APPEAL OF NOTICE AND ORDER – THE SOUTH 9 FEET OF LOT 15 AND ALL OF LOT 16 AND THE NORTH 33 FEET OF THE VACATED PALMER AVENUE, BLOCK 6, HAIGHT AND LITTLE’S ADDITION (1800 NORTH 14TH STREET)

Ms. Wollmuth stated that Algie Mahto, Rosalind Walks and Leisha Aaseth are appealing a Notice and Order requiring the removal or storage in an enclosed building of tires, scrap lumber, surplus, scrap, salvage and similar items on their property as required in Section 14-05-05.1 of the City Code of Ordinances.

Ms. Wollmuth said that the City of Bismarck – Environmental Health Division received a complaint regarding this property on April 5, 2021. A code case was opened and inspections and correspondence with the property owners to ensure compliance began on April 6, 2021.

Ms. Wollmuth said a Notice and Order was sent to the property owners on May 17, 2021. She stated that a Notice and Order is a formal request by the City of Bismarck to comply with regulations outlined in the City Code of Ordinances; in this case specifically, Section 14-05-05.1 (Accumulation of Certain Items Prohibited).

Ms. Wollmuth stated that the property owner submitted an appeal of the Notice and Order to the Planning Division on June 17, 2021.

Ms. Wollmuth said that notifications were sent to approximately 42 property owners adjacent to this property and comments regarding the request were received.

Ms. Wollmuth said staff recommends reviewing the information included in the staff report and rendering a decision of the appeal of the Notice and Order. She also stated that the applicant and the Environmental Health Administrator, Anton Sattler are present for any questions.

Chairman Marback asked if there were any questions of the staff or the Environmental Health Administrator.

Mr. Seifert asked Mr. Sattler if he investigated the issue due to a complaint.

Mr. Sattler said yes. He stated there are times when they will do a spring survey where they will patrol portions of the city, but this particular case was complaint based.

Mr. Seifert asked how many of these complaints are received on average in a year.

Mr. Sattler said he was unsure, but many of the code cases they receive are complaint based.

Mr. Seifert asked that since most do not show up at a Board of Adjustment meeting, can he assume that these people solve the problem on their own.

Mr. Sattler explained their process, stating they first send a Notice of Violation with reasonable time to make their property compliant and that the Notice of Violation also states that if they need additional time, the Environmental Health Division willing to work with the property owner. He said it should be noted the property owner requested and was granted additional time to comply with the Notice of Violation. If a property owner does not comply, a Notice and Order is issued. Mr. Sattler went on to say that a property owner can appeal the Notice and Order to the Board of Adjustment, which they have done in this case. If they do not appeal the Notice and Order and they do not comply, it typically goes to Municipal Court.

Mr. Seifert asked if they do typically settle on their own.

Mr. Sattler confirmed that was correct.

Mr. Janssen asked if the Notice and Order clearly defines what needs to be corrected so the property owner knows to what extent they must clean for it to be considered acceptable.

Mr. Sattler stated the Notice of Violation includes the portion of the ordinance that specifies these things and the items are listed in the body of the letter along with pictures.

Ms. Clark asked when Mr. Sattler was last at this site.

Mr. Sattler stated he was there today.

Ms. Clark asked if there has been any change.

Mr. Sattler said no, the property is still non-compliant.

Mr. Wohl asked if there has been any improvement in the situation since the very first time.

Mr. Sattler said there has been improvement in the front of the yard, some items have been removed and that a fence has been constructed along the side of the property that seems to be concealing some of the items, but according to ordinance these items need to be stored in an enclosed building. The vast majority of the items are now in the backyard which is surrounded by a fence.

Chairman Marback asked if there were further questions and there were none. He then asked the property owners to come forward if they had anything to add.

Ms. Aaseth stated that she spoke with Mr. Sattler and explained that she was preparing for a yard sale and will donate anything that does not sell.

Chairman Marback asked when she plans to have the yard sale and if she could give an approximate date.

Ms. Aaseth stated she is waiting for the weather to improve and is hoping for this weekend or next weekend.

Ms. Aaseth also voiced her concerns regarding how she felt the City employees were trespassing and invading her privacy. She questioned why Mr. Sattler was wearing street clothing and explained she did not know who he was and felt threatened. She stated that she had a privacy fence for the purpose of having privacy.

Chairman Marback asked Ms. Combs for clarification on a privacy fence.

Ms. Combs stated that a fence does not guarantee that anything you put there is private, especially when you live in a city with zoning regulations. Ms. Combs stated that when she spoke with Mr. Sattler, he indicated that his inspection of the property was done from a property that had consented to his presence or from public property. Ms. Combs also stated that the property owner could file a civil suit if she felt her privacy was invaded. However, in reference to the Notice and Order the property is in violation of the ordinance.

Chairman Marback asked Ms. Combs to confirm that Ms. Aaseth does have the ability to file a civil suit if she would like.

Ms. Combs said yes.

Ms. Wollmuth informed the Board that according to the zoning ordinance, a rummage sale could not be held more than twice in one year at the same location, and that a sale could only go four consecutive days, but the total for the two sales could not exceed six days. The ordinance does not allow a perpetual rummage sale on a property.

Chairman Marback opened the public hearing.

Jerry Auck addressed the board, stating he has lived at 1829 North 14th Street for fifty years. He stated this issue did not happen overnight, it is a constant problem, and he strongly encouraged the Board to decide tonight.

Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to affirm the Notice and Order. Mr. Janssen seconded the motion commenting that after looking through the pictures he felt it was important that the City maintain their ordinances to help control issues such as this. Mr. Wohl added that he viewed the property before the meeting and although most of the items were in the backyard, it was creeping into the front. He did not feel this issue was going away even with a yard sale. Ms. Clark expressed her concern that this could be a reoccurring issue every year when the property owner wanted to hold a rummage sale. A call for votes was unanimous by all Board members in favor of affirming the Notice and Order. Chairman Marback informed Ms. Aaseth that she has the right to appeal the decision to the Board of City Commissioners.

OTHER BUSINESS

UPDATE ON ZONING ORDINANCE TEXT AMENDMENT RELATING TO ACCESSORY STRUCTURES LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA (SFHA)

Ms. Wollmuth said the City Commission at their meeting of July 27th approved the proposed ordinance which allows accessory structures 600 square feet or less to be constructed below the base flood elevation utilizing floodproofing techniques outlined by FEMA.

UPDATE ON APPEAL OF THE NOVEMBER 4, 2020 DECISION TO DENY A VARIANCE TO BRYAN SKAGER

Ms. Wollmuth said that at the City Commission at their meeting of July 27th the appeal of Mr. Skager's denial of a variance was upheld. The Building Inspection Division and Floodplain Administrator will work with the applicant to obtain compliance.

Ms. Wollmuth did make an additional request that when quorum calls are made that a response be returned no later than Tuesday at noon so we can prepare the alternate Board member if necessary.

Chair Marback asked if there are any other questions for staff.

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 5:48 p.m. to meet again on September 2, 2021.

Respectfully Submitted,

Jenny Wollmuth

Recording Secretary

APPROVED:

Michael Marback, Chair