



BOARD OF ADJUSTMENT MEETING AGENDA

October 6, 2022

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.

Item No.	Page No.
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MINUTES

1. Consider approval of the minutes of the December 2, 2021 meeting of the Bismarck Board of Adjustment

PUBLIC HEARINGS

2. **Section 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard)** Lot 4, Block 2, Harvest Grove Fourth Subdivision (407 90th Avenue NE) | VAR2022-001

Owner / Applicant: Tim and Jamie Michlitsch

Board Action: ☐ approve ☐ continue ☐ table ☐ deny 7



3. **Section 14-03.1-07(5)(d) of the City Code of Ordinances (Signs / Residential Zoning Standards)** – Lot 2, Block 1, Washington Square Addition (4100 North Washington Street) | VAR2022-002

Owner / Applicant: Nate Wolf, Old 10 Bar & Grille

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

OTHER BUSINESS

4. **Appeal of Zoning Determination | Allowed Uses in CA – Commercial zoning district** - Arrowhead Plaza (1122 North 3rd Street) | APPL2022-001
5. **Appeal of Zoning Determination | Allowed Uses in CG – Commercial zoning district** - Track 712 part of Block 12, Original Plat (712 East Front Avenue)
6. **Appeal of Zoning Determination | Electronic Message Center (EMC) Operational Standards** – Lot 39, Block 1, Bismarck Airport Addition (2301 University Drive, Building 48)
7. **Bylaws.** 2022 Bylaws
8. **Oaths of Office.** Board to take formal oath of office

ADJOURNMENT

9. **Adjourn:** The next regular meeting date is scheduled for **November 3, 2022**

Enclosures: Meeting Minutes of December 2, 2021

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
December 2, 2021**

The Bismarck Board of Adjustment met on December 2, 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, Ken Hoff, Curtis Janssen, Michael Marback Rick Wohl, and alternate Ken Hoff.

Member absent was Chris Seifert.

Staff members present were Hilary Balzum – Community Development Senior Administrative Assistant, Brady Blaskowski, Building Official/Floodplain Administrator, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Kim Lee – Planning Manager and Jenny Wollmuth – Senior Planner

MINUTES:

Chair Marback called for approval of the minutes of the August 5, 2021 meeting of the Board of Adjustment. Board Member Hoff asked that it be added that he was present at that meeting.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Janssen to approve the minutes of the August 5, 2021 meeting, with the suggested correction. With Board Members Clark, Janssen, Marback, Hoff and Wohl voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-04-18 OF THE CITY CODE OF ORDINANCES
(PLANNED UNIT DEVELOPMENTS) – LOT 22, BLOCK 1, MISTY WATERS (6134
CAREFREE CIRCLE)**

Ms. Wollmuth stated the applicants, 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).

Ms. Wollmuth explained that a Planned Unit Development or 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 were made in 2006, 2017, and 2020. The 2006 amendment specified the rear yard setbacks for lots adjacent to the bay (which would include this property) at elevation 1640.3 as delineated by the contour line described in the Letter of Map Revision or LOMR. She also explained that a LOMR is a formal amendment to revise the effective FEMA Flood Insurance Rate Map (FIRM)

for a community and is developed or created based on engineering data which is then reviewed and approved by FEMA.

Ms. Wollmuth said a building permit was issued to construct a single-family dwelling in early July 2021 and 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. She further explained that the footings and foundation for the dwelling were inspected in mid-July and subsequently poured. Ms. Wollmuth further explained that 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.

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 the 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.

Ms. Wollmuth said staff recommends reviewing the above findings, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Chair Marback asked if any other options may have been available to remedy the situation before asking for a variance.

Ms. Wollmuth said the projecting area of the foundation could be removed, the owner could work with their HOA to modify the rear yard setback outlined in the PUD, or the LOMR could be revised. She indicated that all of these options can be time-consuming.

Chair Marback asked if the issue was discovered in July. Ms. Wollmuth said that the issue was discovered after the foundation was poured and inspected in July.

Mr. Wohl asked how the discovery was made. Mr. Blaskowski said the owner's contractor had contacted him to discuss some other items and asked about the survey of the neighboring property. He said as they were reviewing them together he noticed the location of the LOMR line.

Mr. Wohl asked if the PUD requirements state the LOMR setback or if is the same as FEMA guidelines recommend. Mr. Blaskowski said FEMA does not govern setbacks, but if a structure were to extend past the LOMR it would be considered to be in the floodplain.

Mr. and Ms. Lundstrom shared that all of the information presented is accurate and they were under the impression that the information on the building permit was correct when it was obtained.

Chair Marback opened the public hearing.

Thomas Alt, Misty Waters Homeowners Association (HOA), said their job is to uphold the covenants of the subdivision which state buildings cannot extend past the LOMR line as indicated in the PUD ordinance. He said if a variance were to be granted, the Homeowners Association would recognize the variance.

Mr. Janssen asked if it would be felt that a precedent would be set for other lots. Mr. Alt said they would consider them on a case-by-case basis but any lot such as this would be considered out of compliance with the covenants for the subdivision without a variance or other remedy.

Doug Schmidt, Misty Waters HOA and Architectural Review Committee (ARC) for the subdivision, said the diagram of the property was reviewed and it was asked that the LOMR line be staked and marked but were incorrect and nobody knew. He said the HOA does not want to change the LOMR line and by following the covenants, which recognize the PUD, they feel what is in place now fits the area well.

Virginia Adams, 6137 Carefree Circle, said the variance should not be granted, she built her home to the requirements and it would be out of respect for everyone to do the same. She said a six-foot variance is a lot.

Dave Mayer, Artistic Homes, said he designed this home and used the LOMR line from the NLC survey. He said he always sends a footprint of the home to the engineer and when NLC did the survey they had reason to suspect inaccuracies. He said the contract worker, he thinks was also an employee of the City Engineering Department, staked the property and discovered one corner projected so they called the survey company and inquired about it. He added that Mr. Blaskowski then requested a new survey which was completed by Swenson, Hagen & Co. and shows the LOMR line 3.7 feet into the proposed master bedroom, so there was a discrepancy between the Swenson, Hagen & Co. and NLC surveys. He said Toman Engineering Co. engineered the subdivision plat but they do not wish to re-do a survey of the property.

Mr. Hoff asked the dimensions of the protruding portion of the house. Mr. Mayer said it is an 18-foot room and the line arcs through it. He said he does not see where this corner would affect anything.

Additional written comments both for and against the request are attached as Exhibits A-D.

Ms. Wollmuth said regarding the comment of a City Engineering employee, this work was not performed on behalf of the City of Bismarck.

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

Ms. Clark said while she does not see ill will, a financial hardship does not justify the granting of a variance and there does not appear to be any other hardship.

Mr. Janssen said when looking at the first LOMR and base off the elevation, it should have been apparent that this placement would not make sense, especially after the property was staked. He added that mistakes happen, but he does not see a hardship here and they have denied others of variances for lesser issues.

MOTION: A motion was made by Ms. Clark to deny the request for 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). The motion was seconded by Mr. Janssen and with Board Members Clark, Hoff, Janssen, Marback and Wohl voting in favor of the motion, the motion was unanimously approved and the variance was denied.

OTHER BUSINESS

Mr. Ehreth said there is a City-wide effort to align membership terms to expire at the same time of year to end on December 31st. He said this just informative as of now and the City Commission will discuss their preferred action in the near future. He said members will have new oaths to sign with their term dates as well.

Chair Marback asked if the member terms could be put together and provided. Mr. Ehreth provided the current expiration dates of the Board of Adjustment members.

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 5:31 p.m. to meet again on January 6, 2022.

Respectfully Submitted,

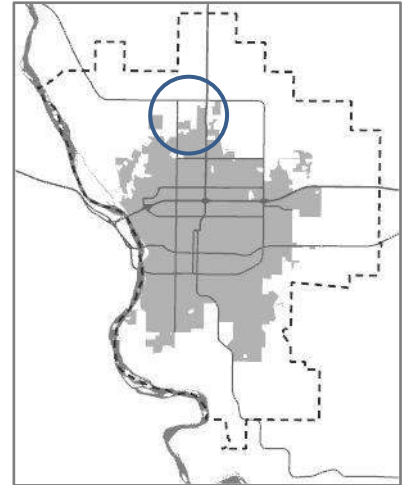
Jenny Wollmuth
Recording Secretary

APPROVED:

Michael Marback, Chair

Project Summary

<i>Title:</i>	Lot 4, Block 4, Harvest Grove Fourth Subdivision (407 90 th Avenue NE)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Tim and Jamie Michlitsch
<i>Project Contact:</i>	Tim Michlitsch
<i>Location:</i>	North of Bismarck, north of 84 th Avenue NE between North Washington Street and US Highway 83, along the south side of 90 th Avenue NE
<i>Request:</i>	Variance from Section 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard)



Staff Analysis

Tim and Jamie Michlitsch are requesting a variance to reduce the required side yard setback along the eastern side of their property from fifteen (15) feet to twelve (12) feet in order to construct an accessory building.

Additional Information

The public has been duly notified of this request. 92 letters were mailed to the owners of nearby properties on September 23, 2022.

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 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard) states, “Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. Each side yard shall be no less than fifteen (15) feet in width. No building on a corner lot shall have a side yard on the side street less than forty (40) feet in width.” According to the site plan submitted with the application, the proposed accessory building would be twelve (12) feet from the side property line located along the eastern side of the property.

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 RR - Residential zoning district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

(continued)

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

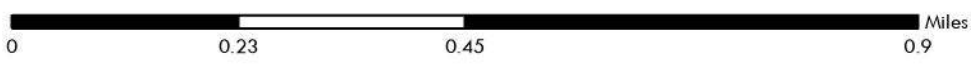
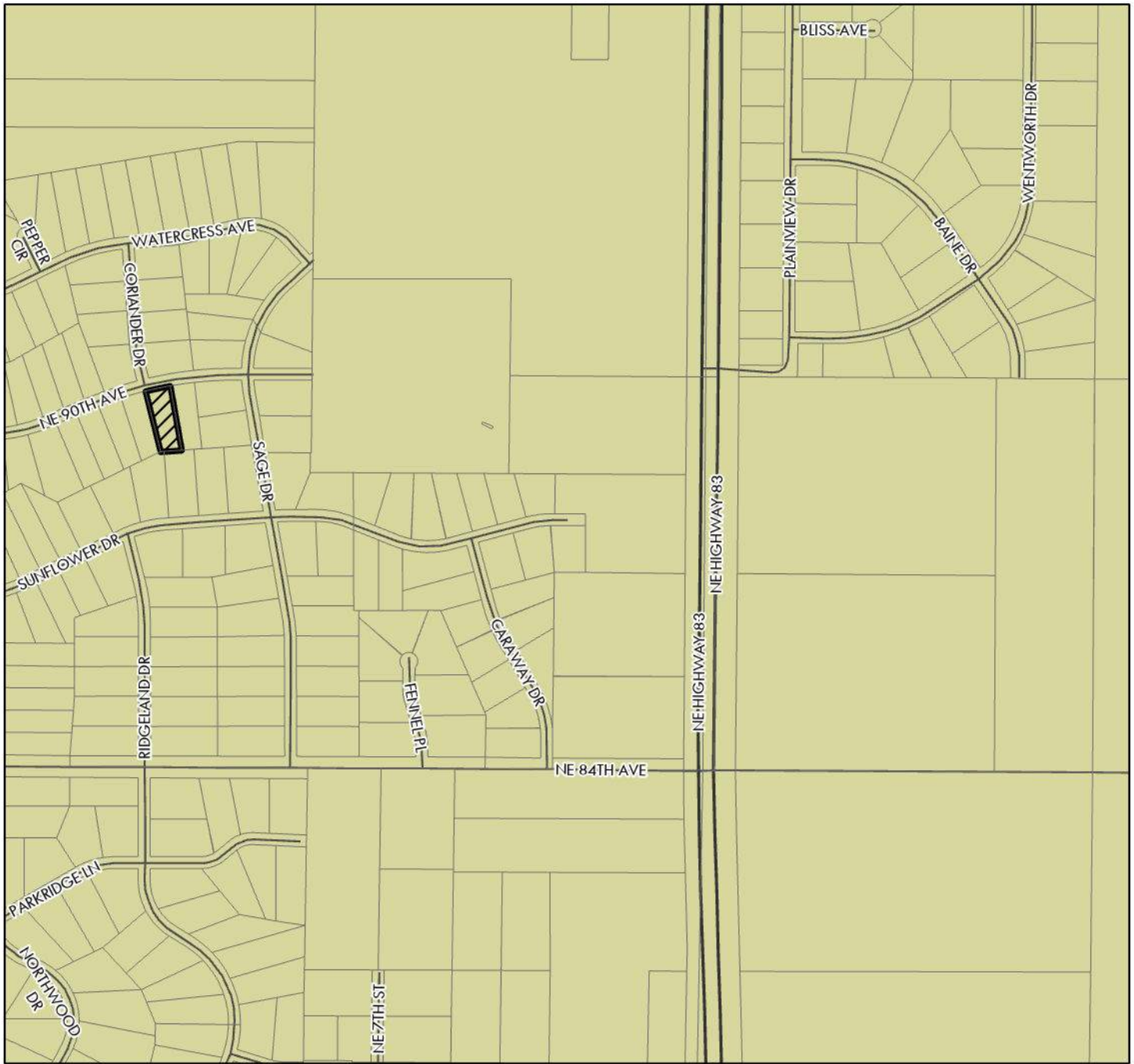
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

HARVEST GROVE FOURTH, L4, B2

VAR2022-001

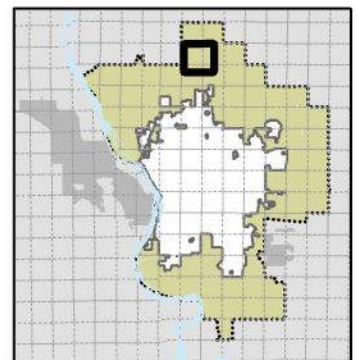


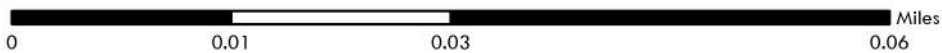
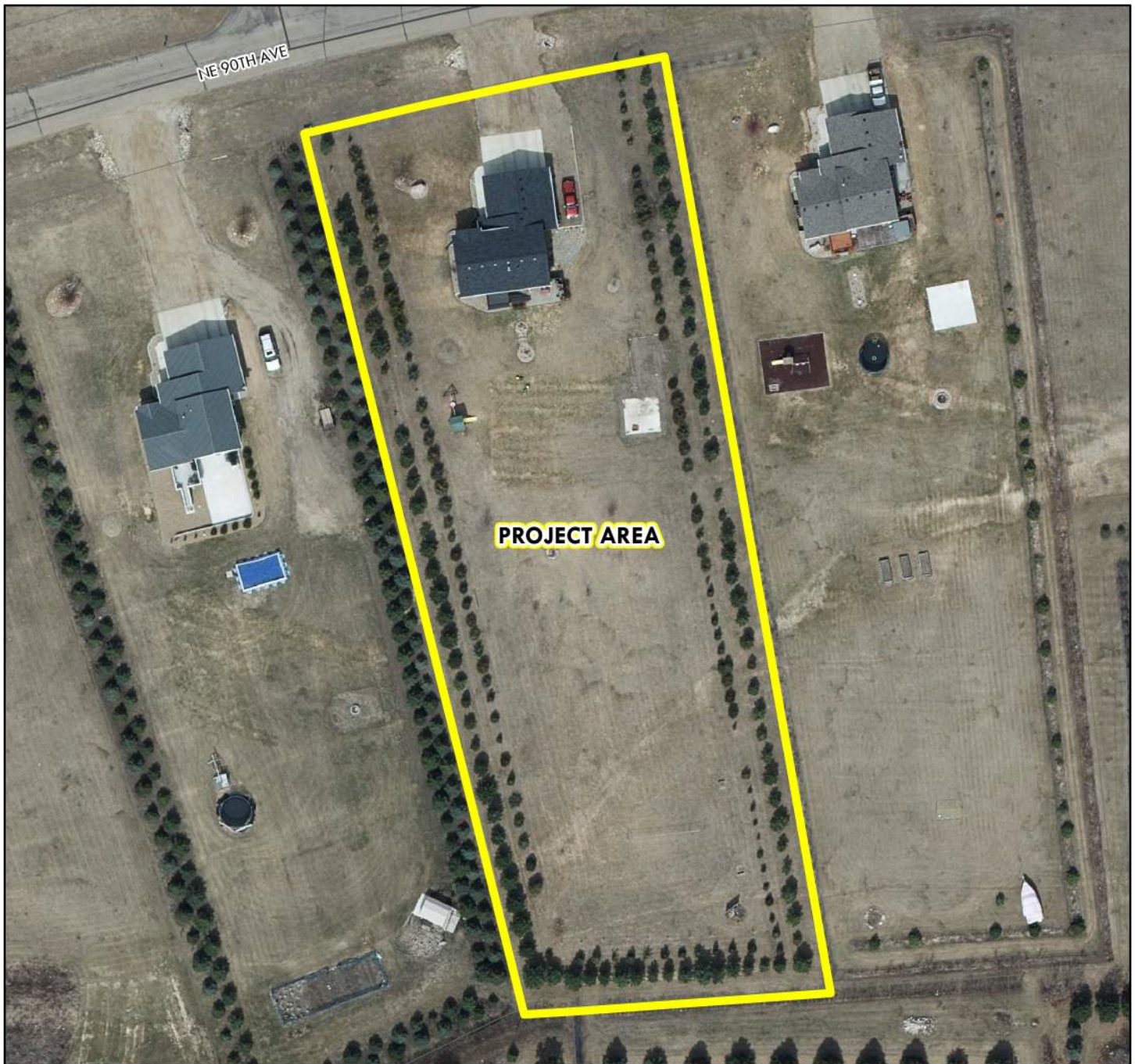
Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
September 19, 2022 (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.*

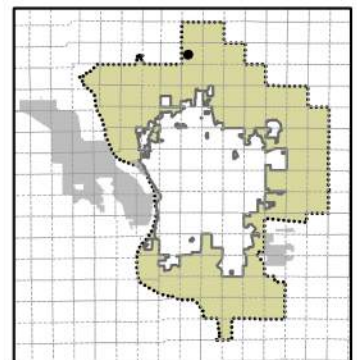


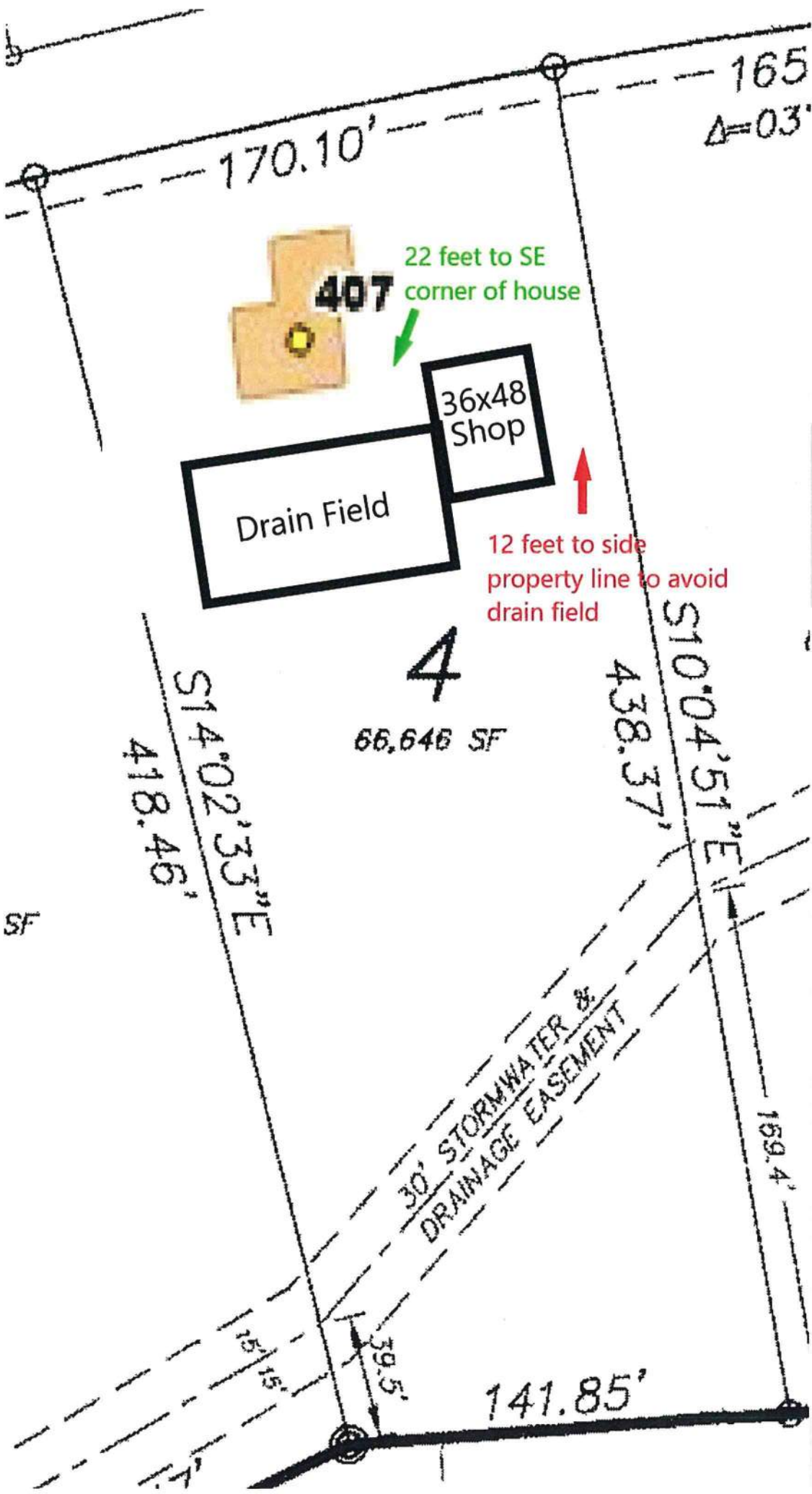


Aerial Imagery from April 2020

City of Bismarck
Community Development Dept.
Planning Division
September 26, 2022

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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)	407 90th Avenue NE
Location of Property:	☐ City of Bismarck ☒ ETA
Type of Variance Requested:	Placement of detached shop 12 feet from the side lot line (rather than 15 ft)
Applicable Zoning Ordinance: (Chapter/Section)	Section 14-04-01(5) of City Code of Ordinances (RR-Residential/Side Yard)

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.)

Placement of the detached shop at the 15 foot setback from the side (east) lot line would place the shop's west edge over the septic drain field. Moving the shop north would place it too close to the existing house (i.e. the house's east wall would be so close to the shop's west wall, getting vehicles into the backyard could become difficult). Placing the shop far enough south to meet the 15 foot setback from the side (east) lot line would place it too far away from the house/driveway for future driveway construction and could infringe on the stormwater drainage easement.

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

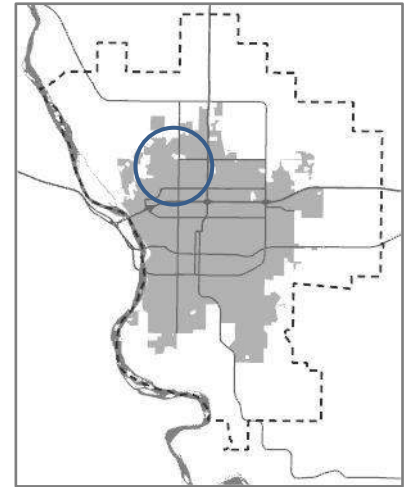
See description immediately above. Additionally, one reason we moved to the house we did was to allow "room to run" for our children. Placing the shop south far enough to avoid the drain field would also place it inappropriately in terms of displacing that "room to run".

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

The movement of the shop to the east by 3 feet allows clearance of the drain field. This has been field verified by excavation to determine the shop's southwest corner will not, in fact, be over the drain field.

Project Summary

<i>Title:</i>	Lot 2, Block 1, Washington Square Addition (4100 North Washington Street)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Nate Wolf, Old 10 Bar & Grille
<i>Project Contact:</i>	Nate Wolf
<i>Location:</i>	In north Bismarck, south of Ash Coulee Drive and west of North Washington Street on the north side of Colt Avenue
<i>Request:</i>	Section 14-03.1-07(5)(e) of the City Code of Ordinances (Signs for Non-Residential use / EMC Signs Operational Requirements)



Staff Analysis

Nate Wolf, Old 10 Bar & Grille, is requesting a variance to extend the frame hold time from 9pm to 11pm and to allow animations, background animations, frame entrances and exits, and other similar effects known as “live action video” for a proposed Electronic Message Center (EMC) sign.

Background Information

Planning staff updated the sign code in July 2020 to balance business interests and public safety. Requirements outlined in the sign code protect the health and safety of the community, create a content neutral sign code consistent with supreme court ruling, and enhance a positive community image for businesses, residents, and visitors.

Prior to the recent updates in 2020, EMC signs were prohibited in all residential areas. They are now permitted with restrictions on hold time. However, prohibition of “live action video” for all zoning districts have been in the sign code since EMC provisions were added in 2004.

A special use permit was approved for the EMC sign by the Planning and Zoning Commission at their meeting of August 24, 2022, with the condition that all operational requirements of the sign code outlined in the City’s zoning ordinance be met. A copy of the draft minutes has been included for your review.

Additional Information

The public has been duly notified of this request. 27 letters were mailed to the owners of nearby properties on September 23, 2022.

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

(continued)

inconvenience or desire to increase the financial return.”

Section 14-3.1-07(5)(e) of the City Code of Ordinances (Signs for Non-Residential Use / EMC Signs Operational Requirements) states, “Electronic message center signs shall be subject to the following operational requirements:

- a. *Brightness. The sign shall not exceed a maximum illumination level of 0.3 foot-candles above ambient light levels.*
- b. *Frame Hold Time. The sign shall have a frame hold time of no less than three (3) seconds between 7:00 a.m. and 9:00 p.m. The sign shall hold on a constant frame or be turned off between 9:00 p.m. and 7:00 a.m.*
- c. *Effects. The sign shall be limited to instantaneous or continuous fading transitions from one static frame to another static frame without the use of any frame entrance, exit or hold effects or the use of any animation or background animation.*
- d. *Video. The use of streaming video or full-motion video on any electronic message center sign is prohibited.”*

According to the applicant’s written statement of hardship, subsections b, c, and d, would not be met if the variance is approved as proposed.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land

involved that are not generally applicable to other properties in this area and within CG - Commercial zoning 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

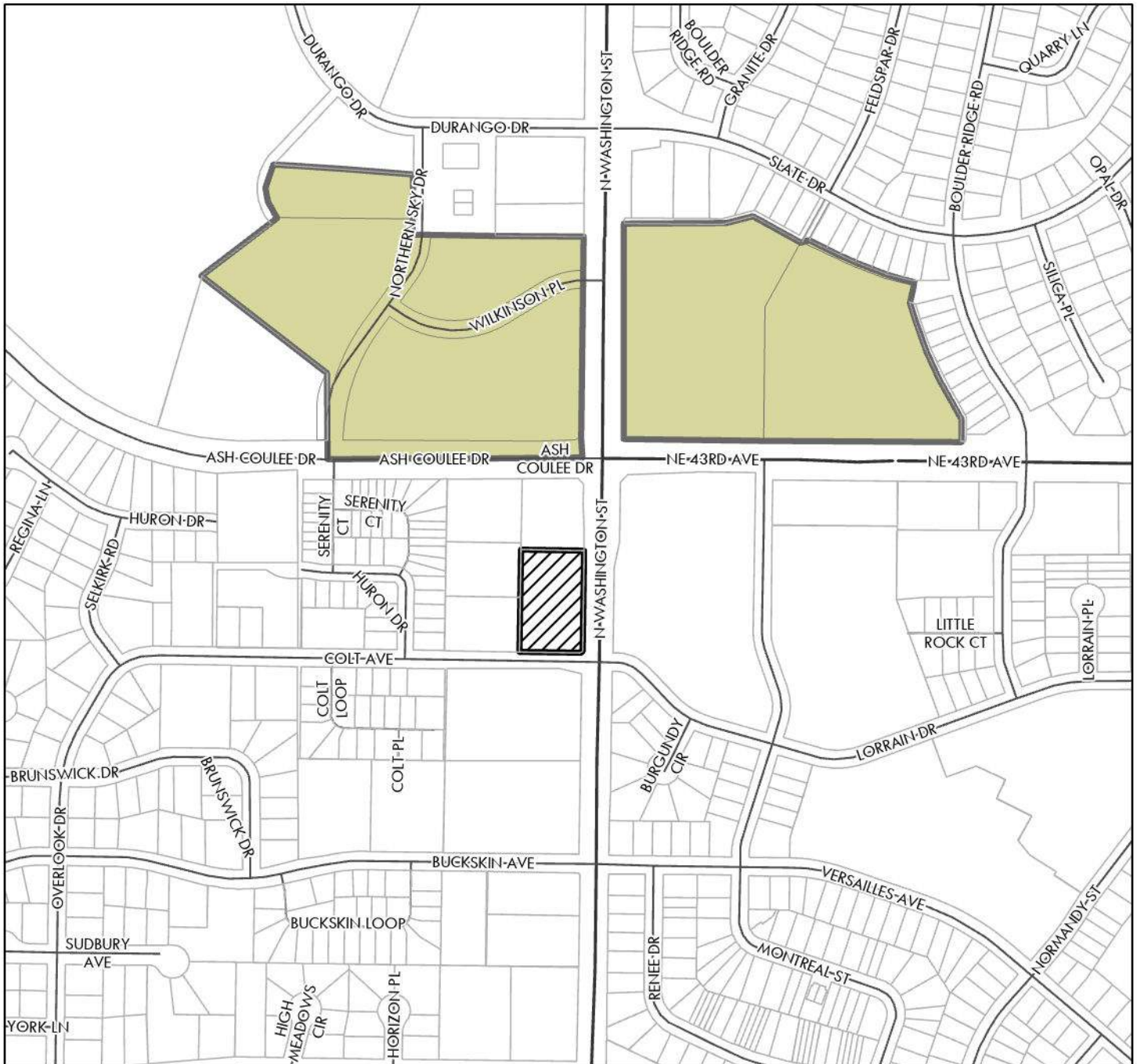
1. Location Map
2. Aerial Map
3. Site Plan
4. Written Statement of Hardship
5. Draft August 24, 2022 Planning and Zoning Commission minutes
6. Applicant letter, Planning and Zoning Commission



Location Map

WASHINGTON SQUARE ADDITION L2, B1

VAR2022-002



0 0.13 0.25 0.5 Miles



City Limits

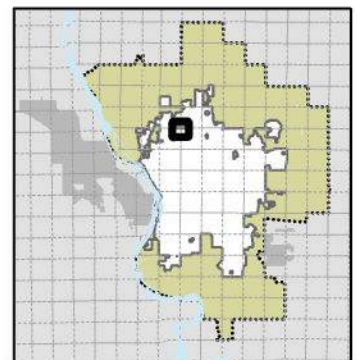


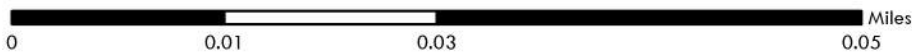
Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
September 19, 2022 (HLB)

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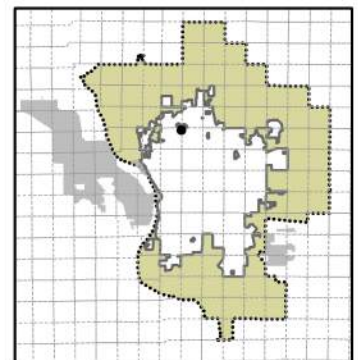


 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Dept.
Planning Division
September 26, 2022

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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 2, Block 1, Washington Square Addition
Location of Property:	☒ City of Bismarck ☐ ETA
Type of Variance Requested:	Variance to Special Use Permit Regarding EMC's
Applicable Zoning Ordinance: (Chapter/Section)	14-03.1-07 Residential Zoning District Standards. 5.e Operational Req.
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.)	
Our request doesn't fall into what I'm gathering is the normal circumstances of hardship. We are asking you to consider that the residential property that causes us to need a special use permit isn't a traditional place of dwelling, but rather a church. We understand why these restrictions are in place; in normal situations, these signs may be a nuisance to the neighborhood. Due the fact that the neighbor in question is a church, we feel that this restriction is unnecessary. Furthermore, the church itself has an EMC that they use just across the street from where Old 10's EMC would be located. Finally, we are only requesting a minor variance in that a majority of the restrictions are fine with us. The only variance we're requesting is in regards to section e, bullets ii. Frame Hold Time, and iii. Effects.	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
For point 5.d.ii. Frame Hold Time, we are requesting that the time that we need to have a constant frame or turned off be modified from 9pm-7am. We would like to extend the hours until 11pm. We would then have constant frame or turned off from 11pm-7am.	
For point 5.d.iii. Effects, we are requesting this restriction be removed entirely to allow animations, background animations, frame entrances and exits, and other similar effects.	
All will follow all other restrictions outlined in Special Use Permit for EMC's.	

BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES EXCERPT
August 24, 2022

The Bismarck Planning & Zoning Commission met on August 24, 2022, 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. Vice Chair Lanning presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner, Cole Johnson, Vern Lanning, Paul Levchak, Gabe Schell, Mike Schmitz, Wendy Van Duyne, Trent Wangen and Paul Zent.

Commissioners Kevin Martin and Mike Schwartz were absent.

Staff members present were Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Will Hutchings – Senior Planner, Kim Lee – Planning Manager, Daniel Nairn – Senior Planner and Jenny Wollmuth – Senior Planner.

Vice Chair Lanning called the meeting to order and Community Development Director Ben Ehreth took roll call.

PUBLIC HEARING - SPECIAL USE PERMIT
LOT 2, BLOCK 1, WASHINGTON SQUARE ADDITION

Vice Chair Lanning called for the public hearing on the special use permit for an electronic message center on Lot 2, Block 1, Washington Square Addition. The property is located in north Bismarck, south of Ash Coulee Drive and west of North Washington Street on the north side of Colt Avenue (4100 North Washington Street).

Mr. Nairn gave an overview of the request, including the following findings related to land use:

1. The proposed special use would comply with all applicable provisions of the zoning ordinance and be consistent with the general intent and purpose of the zoning ordinance if recommended conditions are met;
2. The proposed special use would be compatible with adjacent land uses and zoning if recommended conditions are met;
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area if recommended conditions are met;
4. Adequate public facilities and services are in place or would be provided at the time of development;
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity if recommended conditions are met;

6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic;
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice if recommended conditions are met; and
8. The proposed special use would not adversely affect the public health, safety and general welfare if recommended conditions are met.

Mr. Nairn said, based on these findings, staff recommends approval of the special use permit to allow an electronic message center sign on Lot 2, Block 1, Washington Square Addition, with the following condition:

1. All operational requirements of the ordinance shall be met.

Vice Chair Lanning opened the public hearing.

Nate Wolf, the applicant, noted that the sign would be in the northeast corner of the property rather than the southeast corner of the property. He then stated that the restriction on motion makes the sign useless, adding that they need to be able to use the sign past 9:00pm for their business.

Mr. Ehreth stated that the operations requirements, including the prohibition on live action video and the hold time after 9:00 p.m., are ordinance requirements that cannot be varied by the Planning and Zoning Commission. He added that they could request a variance based on a hardship or challenge staff's interpretation of the requirements.

Commissioner Schell asked for clarification on the use of animation and the use of the sign after 9:00 p.m. Mr. Nairn replied that the prohibition on the use of animation is city-wide and applies to all EMCs in all zoning districts. He added that the hold time requirement after 9:00 p.m. is because of the proximity of this sign to residential zoning districts.

Vice Chair Lanning asked for clarification on the requirements and the location of the sign. Mr. Nairn replied that the location in the northeast corner rather than the southeast corner of the property does not change the requirement since the adjacent parcel to the east is within a residential zoning district.

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

MOTION: Based on the findings contained in the staff report, Commissioner Zent made a motion to approve the special use permit for an electronic message center on Lot 2, Block 1, Washington Square Addition, with the condition that all operation requirements of the ordinance shall be met. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Levchak, Martin, Schmitz, Schwartz, Laning, Van Duyne, Wangen and Zent voting in favor of the motion.



August 29, 2022.

Nate Wolf
SWM Properties, LLC
417 East Main Street
Mandan, ND 58554

Dear Mr. Wolf:

Please be advised that the Bismarck Planning & Zoning Commission, at its meeting of Wednesday, August 24, 2022, approved your request for a special use permit for an Electronic Message Center in a residential area to be located on Lot 2, Block 1, Washington Square Addition, with the following condition:

1. All operational requirements of the ordinance shall be met.

The Bismarck Planning & Zoning Commission approval process has been completed and you may proceed with your project.

Also, please be advised that the special use permit must be put into use within twenty-four (24) months or the permit will expire. A sign permit must also be obtained from the Building Inspections Division. Please contact the Building Inspections Division at 355-1465 for additional information on sign permit requirements and to apply for or continue your permit application.

Additional information on this request can be found by going to our on-line Land Records Management System, eTRAKiT, at <https://trakitapi.bismarcknd.gov/etrakit> and searching for project number SUP2022-014.

If you have any questions or need any additional information on this request, please contact me, the planner in our office assigned to this request, at 355-1854 or dnairn@bismarcknd.gov.

Sincerely,

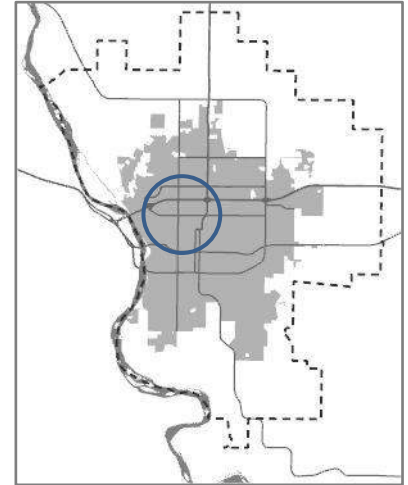
A handwritten signature in blue ink, appearing to read "Dan Nairn", is written over a light blue horizontal line.

Daniel Nairn, AICP
Senior Planner

DN/ac

Project Summary

<i>Title:</i>	Arrowhead Plaza (1122 North 3 rd Street)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Fleck Interstate Investments
<i>Project Contact:</i>	Justin Hoag, Burnt Creek Archery
<i>Location:</i>	In central Bismarck between East Boulevard Avenue and East Arikara Avenue, along the west side of North 3 rd Street



Appeal of Zoning Determination

Justin Hoag is appealing a zoning determination made in September 2022 by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to allowed uses in the CA – Commercial zoning district. Specifically, that a proposed archery use should not be classified as a use in the Commercial Recreation Group. Mr. Hoag is proposing to add an archery range (Burnt Creek Archery) with ancillary retail uses to sell and service archery equipment to a vacant unit in Arrowhead Plaza.

Applicable Sections of the Zoning Ordinance

Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken) states, “An appeal to the board of adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Zoning Administrator and with the board of adjustment at the community development department, a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Zoning Administrator and on due cause shown.”

Section 14-03-07(7) of the City Code of Ordinances (Use Groups / Commercial Recreation Group) states, “A use in the commercial recreation group is one in which the principal activity is the furnishing of

(continued)

recreation, and for which one or more of the following factors is present: a. Alcoholic beverages are offered for the sale for consumption on premises. b. The activity is not operated by a governmental agency. The following uses are declared to be typical uses in the commercial recreation group: Bowling alley, dance hall, pool or billiard parlor, roller- and ice-skating facilities, athletic facility, tavern, saloon or bar, theater with an enclosed structure, auditorium, coin-operated amusements and game devices, private for fraternal clubs, and miniature golf course.”

Section 14-04-10 of the City Code of Ordinances (CA – Commercial / Uses Permitted states, “The following uses are permitted: single- or two-family dwelling when used in conjunction with a commercial use, multifamily dwelling, group dwelling, rowhouse / townhouse, retail group A, service group A, office-bank group, health-medical group, public recreation group, education group and religious institution.”

Staff analysis and determination

Staff have reviewed the building plans and project narrative the proposed archery range and have found that this use closely resembles several the uses that are typical to the commercial recreation group, including a private club, bowling alley and billiard parlor. Therefore, the Planning Manager / Zoning Administrator has determined that the proposed archery range is a commercial recreation use. A commercial recreation uses is not a permitted use in the CA – Commercial zoning district.

Attachments

- | | |
|--|--|
| 1. Location Map | 5. Zoning Determination |
| 2. Aerial Map | 6. Section 14-03-07 of the City Code of Ordinances (Use Groups) |
| 3. Appeal of Zoning Determination | 7. Section 14-04-10 of the City Code of Ordinances (CA – Commercial) |
| 4. Building Plans Submitted with Building Permit | |

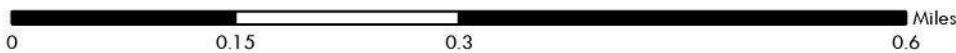
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

Appeal of Zoning Interpretation

APPL2022-001



City Limits

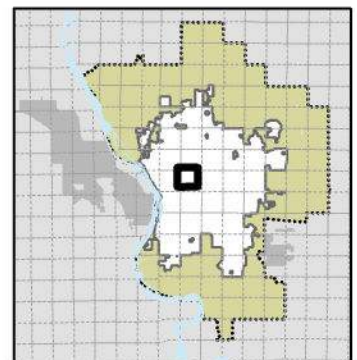


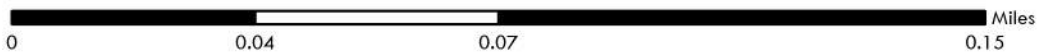
Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
September 19, 2022 (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.*



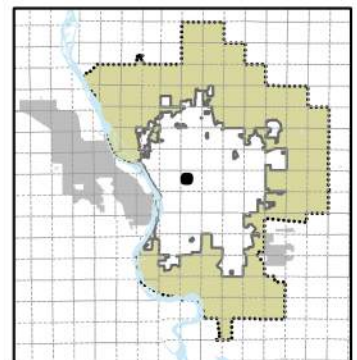


 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Dept.
Planning Division
September 27, 2022

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.





Jenny Wollmuth

Subject: FW: City of Bismarck | Appeal of Zoning Interpretation

From: Justin Hoag [REDACTED]
Sent: Thursday, September 15, 2022 5:57 PM
To: Jenny Wollmuth <jwollmuth@bismarcknd.gov>
Subject: RE: City of Bismarck | Appeal of Zoning Interpretation

CAUTION: *External Email - Use caution clicking links or opening attachments*****

Mrs. Wollmuth and Members of the Board of Adjustment,

My name is Justin Hoag. A few months ago, my wife Breana and I finally decided to open our own archery pro shop after years of dreaming and planning. Neither of us are business people, but we jumped right in anyway. A short time later Burnt Creek Archery was created and registered with the state as an LLC. Burnt Creek Archery will sell and repair archery tackle as well as offer shooting lessons with bow rentals and be a consultant to shooters who may need advice. All of these services will come with a required on site archery range for real world use of the products and services.

After getting a loan, we began shopping for a good location. We needed a location that is not just suitable for men, but a place where women and children feel safe as well. Nationally, archery is showing huge growth especially with woman and children. We found the space in Arrowhead Plaza to be the perfect location. It is centrally located in the city, a safe environment for children, has access to public transportation, and appropriate parking. We leased the property and began construction.

A short time later, I was informed by the City that the space is not zoned for our intended use. I was told that most of the business was acceptable, except for the archery range. Unfortunately, the range is an integral part of the business, and necessary for it to operate as intended. I would formally like to appeal the zoning issue. We have invested approximately \$30,000 dollars into the space that cannot be refunded. Further more, Scheels used to operate out of the Arrowhead Plaza years ago. During that time Scheels had a bow range at this location and offered exactly what I plan to offer now.

This is what brings us to you today. I need the Board's permission to have an archery pro shop in the Arrowhead Plaza. Allowing Burnt Creek Archery to operate in this space will not only benefit us, it will benefit the City of Bismarck greatly. Since we announced the business, Burnt Creek Archery has gotten a massive following and show of support. Thousands of people around Bismarck have shown excitement for the opening by social media, phone calls, face to face, business sponsorship, and even news broadcasters wanting to do stories on it.

Burnt Creek Archery is already working with local after school youth programs such as 4H. Archery in these programs are so popular that they are completely out of space to take on new shooters. The program coordinator informed me that another archery venue is needed for the program to grow.

Nishu Bowman, a parks and rec supported range and the only indoor archery range in Bismarck, has also expressed support. Nishu is a great range and has a lot to offer. Their only down side is that they have so many competitive league shooters and league shooting times that the average recreational shooter has extremely limited time to shoot. Burnt Creek Archery will be the flip side of that coin. We will never close our range for league only shooting giving the beginner and average archer a space as well.

The strain and competition for shooting space is so great that people are shooting in their yards in town. This causes more strain and a safety risk for the city. Neighbors of the people shooting bows in their yards call Bismarck PD to make

valid complaints and Bismarck PD has to respond to these calls and investigate. If Bismarck had more shooting venues, this would help alleviate that problem.

Burnt Creek Archery will also help and support the handicapped. All of the archery ranges in the Bismarck area are handicap accessible, but not ideal. Burnt Creek Archery will be extremely accessible for the handicapped. It will have parking just feet from the front door, handicapped accessible rest rooms, wheel chair ramps, targets that can withstand crossbow bolts and staff on hand if assistance is required.

Burnt Creek Archery is a wanted and needed addition to Bismarck archery, it will support the people of Bismarck as best it can and provide a safe environment for the community to take part in a great family sport. Thank you for your time and consideration.

Sincerely,
Justin Hoag
Burnt Creek Archery



September 8, 2022

Justin Hoag
Burnt Creek Archery

RE: Zoning Determination

Dear Mr. Hoag:

The purpose of this letter is to provide you with a zoning determination for the proposed indoor archery range in Arrowhead Plaza (1122 North 3rd Street). Although an archery range is not identified as a use in any particular zoning district, the zoning ordinance does include typical uses within the various use groups. Based on the information submitted to the Community Development Department and our discussion with you on September 1, 2022, we have determined that Burnt Creek Archery would be appropriately classified as being within the commercial recreation use group.

Arrowhead Plaza is located within the CA – Commercial zoning district. Section 14-04-10 of the City Code of Ordinances (CA Commercial District) does not include uses within the commercial recreation use group as either a permitted or special use within the district. Uses within the commercial recreation group are permitted uses within the CG – Commercial zoning district and the MA – Industrial zoning district.

You have the right to appeal any interpretation or determination made by the Zoning Administrator or other administrative official to the City's Board of Adjustment.

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Kim L. Lee".

Kim L. Lee, AICP
Planning Manager/Zoning Administrator

cc: George Yinneman, Rise Property Brokers

14-03-07. Use Groups. In order to carry out the purposes of this title, certain uses having similar characteristics are classified together as "use groups". In any district in which a use group is permitted, it is the intent of this title to permit any particular member of that use group to be located within that district. In any district in which a use group is not listed as a permitted use, it is the intent of this title to prohibit each and every member of that use group from locating within that district. These use groups shall apply to all zoning districts except the Downtown Core and Downtown Fringe district.

7. Commercial recreation group. A use in the commercial recreation group is one in which the principal activity is the furnishing of recreation, and for which one or more of the following factors is present:

a. Alcoholic beverages are offered for sale for consumption on the premises.

b. The activity is not operated by a governmental agency.

c. The following uses are declared to be typical uses in the commercial recreation group:

1) Bowling alley.

2) Dance hall.

3) Pool or billiard parlor.

4) Roller and ice skating facilities.

5) Athletic facility.

6) Tavern, saloon, bar.

7) Theater within an enclosed structure, auditorium.

8) Coin-operated amusements and game devices provided they are accessible to minors and do not require a license under Chapter 5-03 of the Code of Ordinances of the City of Bismarck.

9) Private or fraternal clubs.

10) Miniature golf course.

14-04-10. CA Commercial District. In any CA commercial district, the following regulations shall apply:

1. General description. The CA commercial district is established as a district in which the predominant use of the land is for commercial and service uses to serve residential districts in the general area. The CA commercial district should be served by arterial or collector streets. For the CA commercial district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the continued use of the land for neighborhood commercial and services uses.

b. To prohibit heavy commercial and services uses and industrial uses of the land, and to prohibit any other use which would substantially depreciate the value of residential districts surrounding the CA commercial district.

c. To encourage the discontinuance of mixed uses and uses that would not be permitted as new uses under the provisions of this article.

d. To discourage the expansion of CA commercial districts and the encroachment of such districts into surrounding residential districts.

e. To discourage any use, which because of its character or size, would create requirements and costs for public services, such as police and fire protection, water supply and sewerage substantially in excess of those necessary if the district were developed solely for neighborhood commercial and service uses.

2. Uses permitted. The following uses are permitted:

a. A single- or two-family dwelling when used in conjunction with a commercial use.

b. Multifamily dwelling.

c. Group dwelling.

d. Row houses/townhouses (subject to RM residential zone regulations).

e. Retail group A.

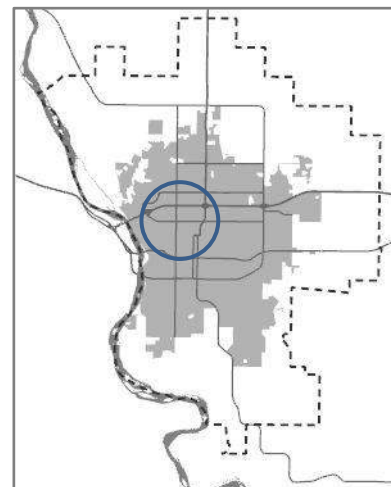
f. Service group A.

g. Office-bank group.

- h. Health-medical group.
- i. Public recreation group.
- j. Education group.
- k. Religious institution.

Project Summary

<i>Title:</i>	Tract 712 of Part of Block 12, Original Plat (712 East Front Avenue)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Lafarge Dakota Inc
<i>Project Contact:</i>	Wayne Munson, Bismarck Sign Co
<i>Location:</i>	In central Bismarck, south of East Main Avenue between S 6 th Street and S 7 th St, along the north side of East Front Avenue



Appeal of Zoning Determination

Wayne Munson is appealing a zoning determination made in September 2022 by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to allowed uses in the CG – Commercial zoning district. Specifically, that Bismarck Sign Co should not be classified as an industrial use. Mr. Munson is proposing to relocate Bismarck Sign Company to the exiting Lafarge property located at 712 East Front Avenue.

Applicable Sections of the Zoning Ordinance

Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken) states, “An appeal to the board of adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Zoning Administrator and with the board of adjustment at the community development department, a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Zoning Administrator and on due cause shown.”

Section 14-04-10 of the City Code of Ordinances (CG – Commercial / Uses Permitted states, “The following uses are permitted: single- or two-family dwelling when used in conjunction with a commercial use, multifamily dwelling, group dwelling, multifamily high-rise, hotel-motel, retail group A, service Group A, Office-bank group, retail group B, service group B, commercial recreation group, wholesale group, health-

(continued)

medical group, education group, public recreation group, railroad or bus passenger station, commercial greenhouse, commercial parking lot, religious institution, microbrew pub, domestic distillery.”

Staff analysis and determination

Staff have reviewed the proposed request and although a sign company is not specifically identified as a use in any particular zoning district, the zoning ordinance does include typical uses within the various use groups. Uses within the Industrial Group A are businesses involving the manufacturing or the storage and sale of heavy building materials or equipment. This use group also references the manufacture, compounding, processing, packaging, treatment or assembly of various materials and products, including electric and neon signs, outdoor advertising signs, and commercial advertising structures. The use group also includes references to contractors’ equipment storage yards.

Bismarck Sign Company would be appropriately classified as being within the Industrial Group A. This determination is based on the assembly and storage of signs for Bismarck Sign Company. The industrial group A is not a permitted use group in the CG – Commercial zoning district.

Attachments

- | | |
|-----------------------------------|--|
| 1. Location Map | 4. Zoning Determination |
| 2. Aerial Map | 5. Section 14-04-10 of the City Code of Ordinances (CG – Commercial) |
| 3. Appeal of Zoning Determination | |

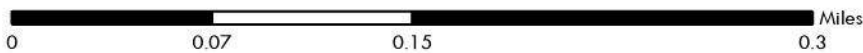
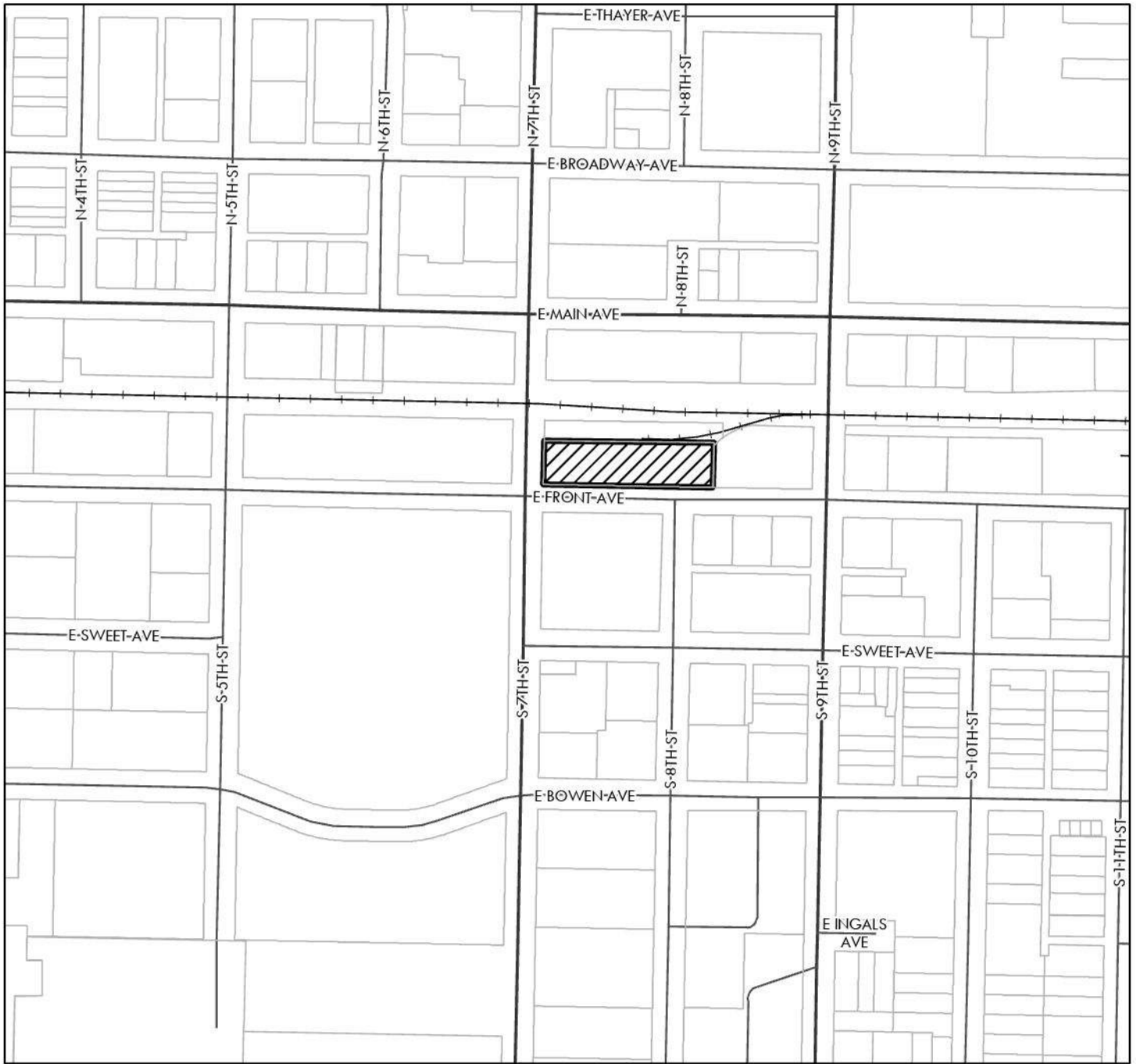
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

Appeal of Zoning Interpretation

APPL2022-003

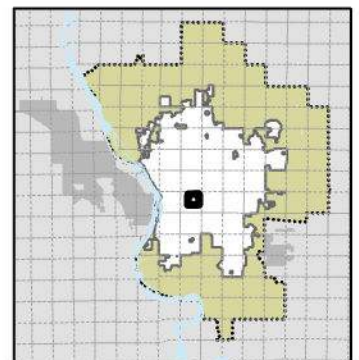


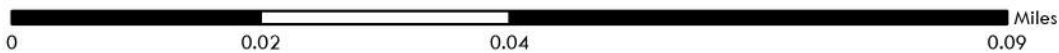
- City Limits
- Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
September 19, 2022 (HLB)

Section, township, and
range indicated in orange

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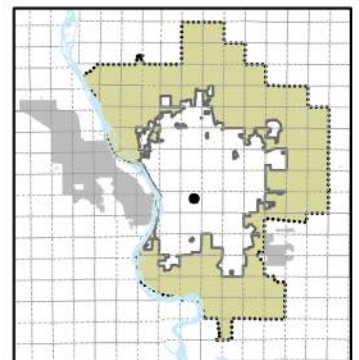


 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Dept.
Planning Division
September 27, 2022

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.



Jenny Wollmuth

Subject: FW: City of Bismarck | Appeal of Zoning Interpretation

From: Wayne Munson [REDACTED]
Sent: Tuesday, September 13, 2022 1:28 PM
To: Jenny Wollmuth <jwollmuth@bismarcknd.gov>
Cc: Tracy Walters <twalters@bismarcknd.gov>; Kim Lee <klee@bismarcknd.gov>
Subject: RE: City of Bismarck | Appeal of Zoning Interpretation

CAUTION: ***External Email - Use caution clicking links or opening attachments***

I would like to appeal the interpretation made by the zoning administrator dated 09/08/22 that Bismarck Sign Company is classified as being in the Industrial Group A and that Industrial Group A uses are permitted within the MA – Industrial or MB – Industrial zoning district, not the CG – Commercial zoning district



Wayne Munson
Co-Founder | The Sign Guy, **Bismarck Sign Co.**



www.BismarckSignCo.com

[1926 Frontier Drive, Bismarck ND 58504](#)

 Let's connect!

 View my feed

 Add me on Facebook



September 8, 2022

Wayne Munson & Alexandra Lund
Bismarck Sign Company
1926 Frontier Drive
Bismarck ND 58504

RE: Zoning Determination

Dear Mr. Munson and Ms. Lund:

The purpose of this letter is to provide you with a zoning determination for the proposed relocation of Bismarck Sign Company to the former LaFarge site at 712 East Front Avenue. Although a sign company is not specifically identified as a use in any particular zoning district, the zoning ordinance does include typical uses within the various use groups. Uses within industrial group A are businesses involving the manufacturing or the storage and sale of heavy building materials or equipment. This use group also references the manufacture, compounding, processing, packaging, treatment or assembly of various materials and products, including electric and neon signs, outdoor advertising signs, and commercial advertising structures. The use group also includes references to contractors' equipment storage yards. Based on our email discussions with you and our in-person meeting on September 1, 2022, we have determined that Bismarck Sign Company would be appropriately classified as being within industrial group A. This determination is based on the assembly and storage of signs by your business rather than on the manufacturing of signs.

The property at 712 East Front Avenue is located within the CG – Commercial zoning district. Section 14-04-12 of the City Code of Ordinances (CG Commercial District) does not include uses within the industrial group A use group as either a permitted or special use within the district. Uses within the industrial use group A are permitted uses within the MA – Industrial and MB – Industrial zoning districts.

You have the right to appeal any interpretation or determination made by the Zoning Administrator or other administrative official to the City's Board of Adjustment.

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Kim L. Lee".

Kim L. Lee, AICP
Planning Manager/Zoning Administrator

14-04-12. CG Commercial District. In any CG commercial district, the following regulations shall apply:

1. General description. The CG commercial district is a heavy commercial area located outside the central business district to provide commerce and service to the City of Bismarck and surrounding regional market. The CG commercial district is established to promote the general purpose of this article, the specific intent of this section is:

- a. To encourage the continued expansion of the commercial facilities within the city without creating increased vehicular congestion in the existing central business district.
- b. To provide an orderly and comprehensive expansion of commercial services within the city.
- c. To prevent commercial encroachment on existing residential districts.
- d. To encourage the development of a conveniently arranged district offering a broad range of commercial and professional services in a relaxed atmosphere and in an area where adequate off-street parking will be provided.

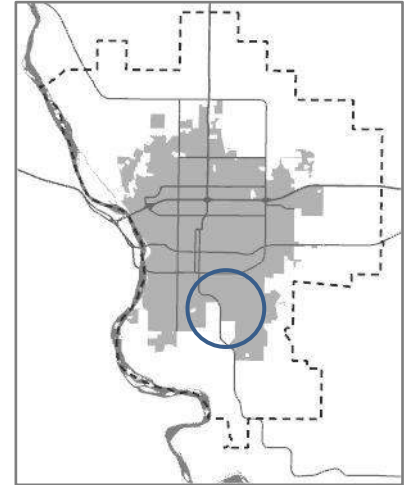
2. Uses permitted. The following uses are permitted:

- a. A single- or two -family dwelling when used in conjunction with a commercial use.
- b. Multifamily dwelling.
- c. Group dwelling.
- d. Multifamily high rise.
- e. Hotel-motel.
- f. Retail group A.
- g. Service group A.
- h. Office-bank group.
- i. Retail group B.
- j. Service group B.

- k. Commercial recreation group.
- l. Wholesale group.
- m. Health-medical group.
- n. Education group.
- o. Public recreation group.
- p. Railroad or bus passenger station.
- q. Commercial greenhouse.
- r. Commercial parking lot.
- s. Religious institution.
- t. Microbrew pub.
- u. Domestic distillery.

Project Summary

<i>Title:</i>	Lot 39, Block 1, Bismarck Airport Addition (2301 University Drive, Building 48)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Bismarck Airport
<i>Project Contact:</i>	Executive Air Taxi
<i>Location:</i>	In south Bismarck, along the east side of University Drive between Airport Road and Maverick Avenue



Appeal of Zoning Determination

Executive Air Taxi is appealing a zoning determination made by Planning staff in application of Special Use Permit and supported by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to size requirements for Electronic Message Center (EMC) signs adjacent to the A – Agriculture zoning district.

Background Information

Planning staff updated the sign code for the City of Bismarck in July 2020 to balance business interested and public safety. Requirements outlined in the sign code protect the health and safety of the community, create a content neutral sign code consistent with supreme court ruling, and enhance a positive community image for businesses, residents and visitors.

The Planning and Zoning Commission at their meeting of July 27, 2022 approved a special use permit to allow an EMC sign on Lot 39, Block 1, Bismarck Airport Addition, with the conditions that the size of the EMC sign is no greater than 32 square feet, the maximum size allowed by ordinance, and that all operational requirements of the ordinance be met. A copy of the meeting minutes is attached.

Applicable Sections of the Zoning Ordinance

Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken) states, “An appeal to the board of adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Zoning Administrator and with the board of adjustment at the community development department, a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(continued)

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Zoning Administrator and on due cause shown.”

Section 14-03.1-07(5)(d) of the City Code of Ordinances (Signs / Residential Zoning District Standards) states, The following provisions apply to electronic message center signs within residential zoning districts or within one-hundred and fifty (150) feet of a residential zoning district, as measured from any part of the sign to the nearest property line within any residential zoning district: i. A special use permit shall be required, subject to all procedures of Section 14-03-08 (Special Sues) of the City Code of Ordinances, ii. Electronic message center signs may only be incorporated into on-premise pole signs, monument signs or wall signs. Electronic message center signs shall not be located on projecting signs, portable signs, or any other temporary signs, with the exceptions of demonstrations allowed by Section 14-03.1-03(3). No off-premise advertising may occur on electronic message center signs, iii. Only one (1) electronic messenger sign shall be allowed per parcel, iv. The electronic message center portion of a sign shall not exceed thirty-two (32) square feet in area, v. Electronic message centers may only be included on pole signs that also contain static content. The electronic portion of the sign may not exceed fifty (50) percent of the entire sign area, and must be entirely below the static portion of the sign. Electronic message center signs used as wall signs are except from this requirement.”

Staff analysis and determination

Staff have reviewed the proposed request and have determined that as the property is adjacent to the A – Agriculture zoning district to the west, across University Drive, the residential zoning district standards outlined in the City’s sign code limiting the size of the proposed EMC sign to 32 square feet apply. Agricultural districts may become a variety of different uses that are presently unknown, the sign ordinance conservatively applies the more stringent residential standards.

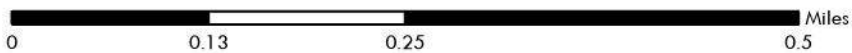
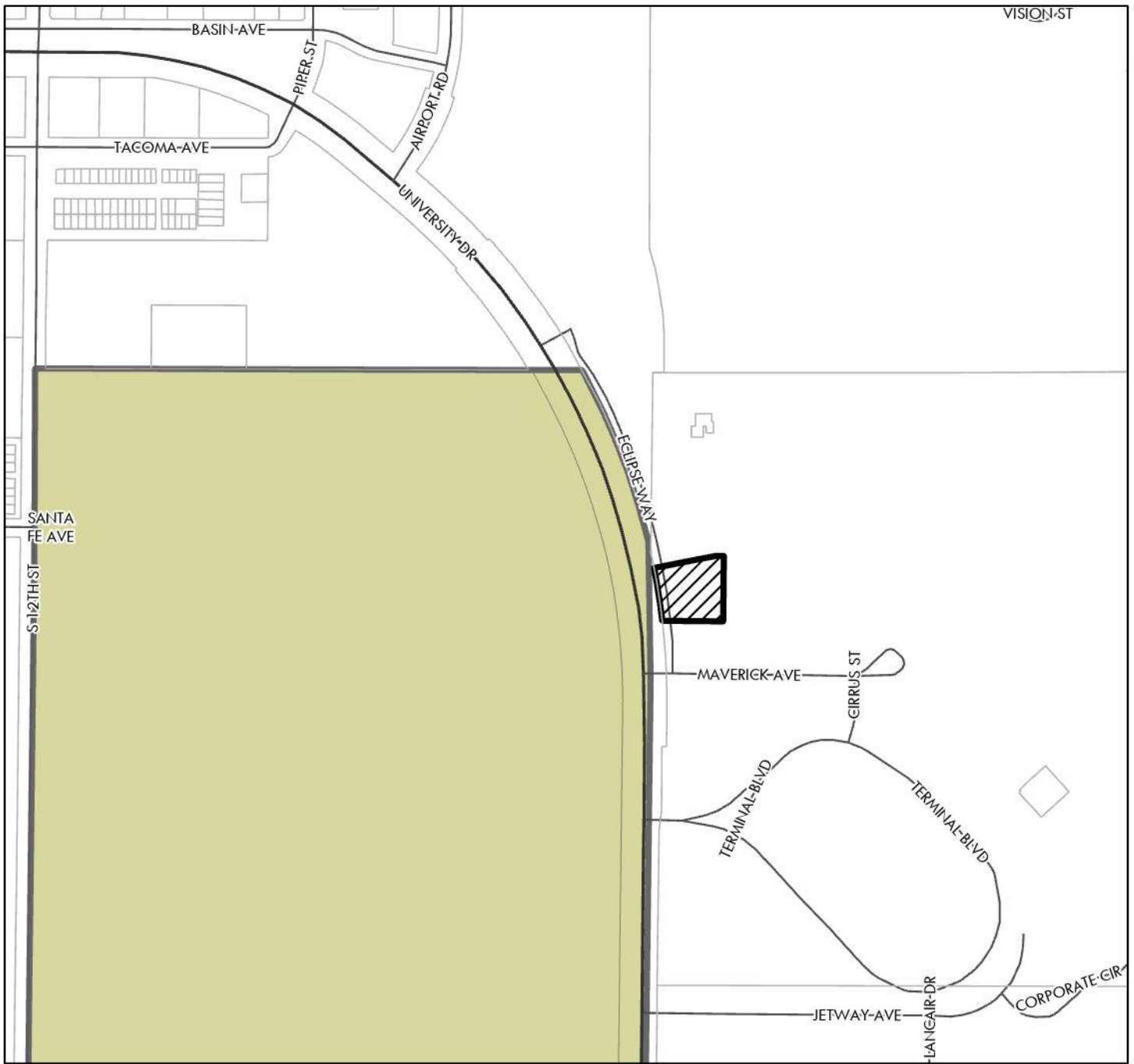
Attachments

- | | |
|-----------------------------------|--|
| 1. Location Map | 4. Planning and Zoning Commission meeting Minutes, July 27, 2022. |
| 2. Aerial Map | 5. Section 14-03.1-07(5)(d) of the City Code of Ordinances (Signs / Residential Zoning District Standards) |
| 3. Appeal of Zoning Determination | |



Location Map
Appeal of Zoning Interpretation

APPL2022-002



City Limits

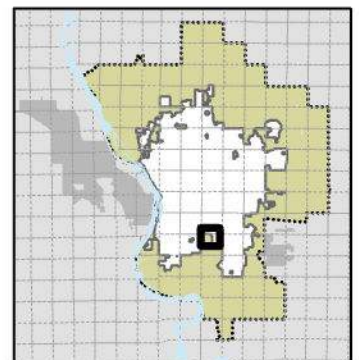


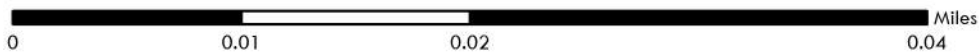
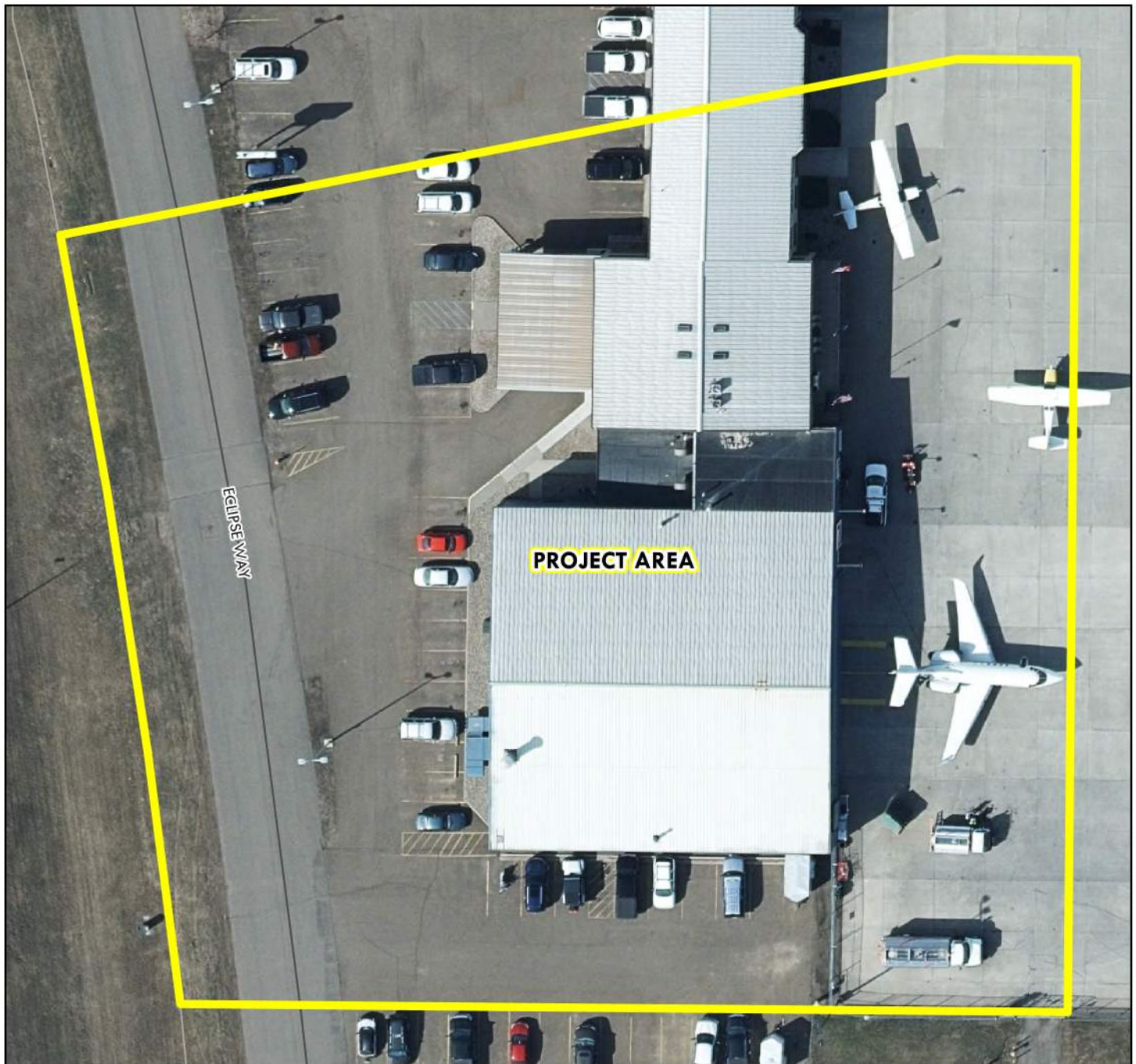
Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
September 19, 2022 (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.*



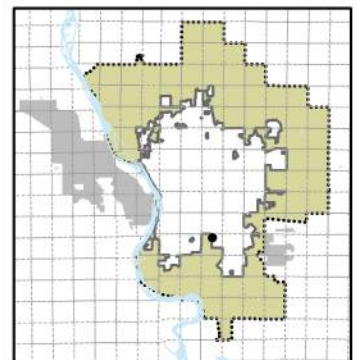


 City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from April 2020

City of Bismarck
Community Development Dept.
Planning Division
September 28, 2022

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.





September 9, 2022

Board of Adjustment

Property: 2301 University Drive

Executive Air has been operating a commercial aviation service since 1973.

This property is zoned P Public and the land property class is listed as Commercial.

The Planning and Zoning Commission has issued a special use permit for the use of an EMC on our property, and we greatly appreciate that.

The city staff's recommendation is: "An EMC in this location is allowable, but must follow the requirements for residential zoning districts. The ordinance identifies P - Public districts adjacent to the A - Agricultural zoning district as residential for the purpose of administration of the sign ordinance (because we do not know what A districts may become in the future). The max sign area for residential EMCs is 32SF and the sign is proposed to be 43.2. Size should be reduced to comply."

Our challenge to the Board of Adjustment is: Since this property class is listed as Commercial and our business has been operating since 1973 as a commercial business, the property should be treated as commercial, not as a residential zone because it is adjacent to an Agricultural Zone.

Per the sign code a business located on a Principal Arterial Road and operating in a CG Commercial zone should be allowed an Electronic Message Center of 100 sq feet in size.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Paul Vetter', is written over a horizontal line.

Paul Vetter, COO

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
July 27, 2022**

The Bismarck Planning & Zoning Commission met on July 27, 2022, 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 Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner, Cole Johnson, Paul Levchak, Kevin Martin, Mike Schmitz, Mike Schwartz, Wendy Van Duyne, Trent Wangen and Paul Zent.

Commissioners Vernon Laning and Gabe Schell were absent.

Staff members present were Hilary Balzum – Community Development Senior Administrative Assistant, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Will Hutchings – Senior Planner, Kim Lee – Planning Manager and Daniel Nairn – Senior Planner.

Chair Schwartz welcomed Mayor Mike Schmitz to the Planning and Zoning Commission and said he is joining a great group of people including a very sharp Planning staff.

**PUBLIC HEARING - SPECIAL USE PERMIT (EMC)
LOT 39, BLOCK 1, BISMARCK AIRPORT ADDITION**

Chair Schwartz called for the public hearing on a special use permit to allow an electronic message center sign on Lot 39, Block 1, Bismarck Airport Addition. The property is located in south Bismarck, along the east side of University Drive between Airport Road and Maverick Avenue (2301 University Drive, Building 48).

Mr. Nairn gave an overview of the request, including the following findings related to land use:

1. The proposed special use would comply with all applicable provisions of the zoning ordinance and be consistent with the general intent and purpose of the zoning ordinance if recommended conditions are met.
2. The proposed special use would be compatible with adjacent land uses and zoning if recommended conditions are met.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area if recommended conditions are met;
4. Adequate public facilities and services are in place or would be provided at the time of development;

5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity if recommended conditions are met;
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic;
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice if recommended conditions are met; and
8. The proposed special use would not adversely affect the public health, safety and general welfare if recommended conditions are met.

Mr. Nairn said, based on these findings, staff recommends approval of the special use permit to allow an electronic message center sign on Lot 39, Block 1, Bismarck Airport Addition, with the following conditions:

1. The size of the electronic message center is no greater than 32 square feet, the maximum allowable size in Section 14-03.1-07(5)(d) of the City Code of Ordinances (Signs/Residential Zoning District Standards).
2. All operational requirements of the ordinance shall be met.

Commissioner Levchak asked that since the sign would be so close to the airport he assumes the FAA has provided comments. Mr. Nairn said the airport did have to sign off on the request and he will let them comment further. He said the sign would be placed outside of the airport operations area and face University Drive.

Wayne Munson, Bismarck Sign Co., said there was a few different options to consider such as the sign located 165 feet away at United Tribes Technical College which the majority of traffic view and the closest area on University Drive to see this sign is closer to 400 feet away. He said when designing for safety they always recommend a larger sign as the Department of Transportation studies have shown better viewability reduces the amount of time that needs to be spent trying to view it. He added that the structure also dictates the size and it will be sound and stable. He said if this were a commercial property, based on the adjacent roadway classification, this sign could be 72 square feet and in working with the applicant have designed a safe and appropriate sign for the property.

Greg Haug, Bismarck Airport Director, said Executive Air approached him to have a sign and the FAA rules would not be considerable enough to require comment or approval in that capacity.

Commissioner Zent said traffic coming south would likely be looking for an airport sign and entrance and other large signs might hinder that or in trying to find UTTC. He said the size proposed as probably as big as we would want to go.

Mr. Haug said for distance and size those are all good factors to consider as well as the UTTC signage and other airport signs.

Ben Ehreth stated that the Planning and Zoning Commission does not have the authority to increase the area of the sign beyond the size limitation outlined in the zoning ordinance. He noted that if it is the desire of the applicant to increase the area of the sign they could apply

to the Board of Adjustment to either challenge staff's interpretation of this section of the ordinance or apply for a variance.

Chair Schwartz opened the public hearing

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

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to recommend approval of the special use permit to allow an electronic message center sign on Lot 39, Block 1, Bismarck Airport Addition, with the following conditions: 1. The size of the electronic message center is no greater than 32 square feet, the maximum allowable size in Section 14-03.1-07(5)(d) of the City Code of Ordinances (Signs/Residential Zoning District Standards); and 2. All operational requirements of the ordinance shall be met. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Levchak, Martin, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

CHAPTER 14-03.1 – SIGNS

14-03.1-01 Purpose. The purpose of this chapter is to:

1. Provide fair standards and procedures to ensure that individuals, businesses, and organizations have a reasonable ability to communicate messages to the general public.
2. Protect public safety by preventing or mitigating traffic hazards through obstruction of view, distraction of roadway users, and all other negative effects on public travel.
3. Promote wayfinding to facilitate the efficient identification of destinations, which requires making a distinction between on-premise signs and off-premise signs.
4. Reduce visual clutter along public rights-of-way to improve the legibility of existing signs, including traffic control devices, and enhance the overall aesthetics of the community.
5. Protect property values of residential and commercial property owners who may be negatively impacted by signs within view of the property.
6. Encourage creative expression and artistic contributions to the community, which requires a distinction between signs of a commercial and non-commercial nature.
7. Preserve the health, safety, and general welfare of the public.

(Ord. 6423, 07-25-20)

5. Signs for Non-Residential Uses. On-premise advertising signs are permitted in residential zoning districts on properties with non-residential uses, other than home occupations, such as schools and religious institutions, subject to the following standards:

i. Electronic Message Center Signs. The following provisions apply to electronic message center signs within residential zoning districts or within one-hundred and fifty (150) feet of a residential zoning district, as measured from any part of the sign to the nearest property line within any residential zoning district:

i. Special Use Permit. A special use permit shall be required, subject to all procedures of Section 14-03-08 (Special Uses) of the City Code of Ordinances.

ii. Sign Type. Electronic message center signs may only be incorporated into on-premise pole signs, monument signs, or wall signs. Electronic message center signs shall not be located on projecting signs, portable signs, or any other temporary signs, with the exception of demonstrations allowed by Section 14-03.1-03(3). No off-premise advertising may occur on electronic message center signs.

iii. Number of Signs. Only one (1) electronic message center sign shall be allowed per parcel.

iv. Area of Signs. the electronic message center portion of a sign shall not exceed thirty-two (32) square feet in area.

v. Proportion of Sign. Electronic message centers may only be included on pole signs that also contain static content. The electronic portion of the sign may not exceed fifty (50) percent of the entire sign area, and must be entirely below the static portion of the sign. Electronic Message Center signs used as wall signs are exempt from this requirement.

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 consist 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.

Board of Adjustment - Chairman

Date