



BOARD OF ADJUSTMENT MEETING AGENDA

March 2, 2023

Tom Baker Meeting Room Lower level	5:00pm	City-County Office Building 221 North 5 th Street
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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 October 6, 2022 meeting of the Bismarck Board of Adjustment

PUBLIC HEARINGS

2. **Section 14-04-16(5) of the City Code of Ordinances (P – Public / Side Yard)** Tract 3 of Part of Section 31 (1005 River Road), to be platted as Lot 1, Block 1, Technology Hill Addition, and Part of the E½ of the NE¼ of Section 31 (1200 Schafer Street) | VAR2023-001

Owner / Applicant: Donald Roethler, Bismarck State College

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



OTHER BUSINESS

3. **Bylaws.** 2023 Bylaws
4. **Oaths of Office.** Board to take formal oath of office

ADJOURNMENT

5. **Adjourn:** The next regular meeting date is scheduled for **April 6, 2023.**

Enclosures: Meeting Minutes of October 6, 2023

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 6, 2022**

The Bismarck Board of Adjustment met on October 6, 2022, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided.

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

Staff members present were Jannelle Combs – City Attorney, Kim Lee – Planning Manager, Jenny Wollmuth – Senior Planner and Tracy Walters – Office Assistant II.

MINUTES:

Chair Marback called for approval of the minutes of the December 2, 2021 meeting of the Board of Adjustment.

MOTION: A motion was made by Ms. Clark and seconded by Mr. Janssen to approve the minutes of the December 2, 2021 meeting as distributed. With Board Members Seifert, Marback, Janssen, Clark and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01 OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL / SIDE YARD) – LOT 4, BLOCK 2, HARVEST GROVE FOURTH SUBDIVISION (407 90TH AVENUE NE)

Chair Marback called for the public hearing on the side yard setback variance request, for Lot 4, Block 2, Harvest Grove Fourth Addition.

Ms. Wollmuth stated the applicants, 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.

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

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

Chair Marback asked the owners to come forward; however, the homeowners were not present at the meeting.

Chair Marback opened the public hearing.

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

In order to facilitate discussion, Mr. Janssen made a motion to deny the request, with Mr. Seifert seconding the motion.

Chair Marback asked for any discussion.

Mr. Seifert said he would have had questions for the homeowners; however, as they were not present and he could not see the hardship, he would vote against it.

Ms. Clark also stated she would have questions for the homeowners and was at a loss to see what to do about that, so she would support a denial.

Chair Marback asked for any further discussion on the matter.

Ms. Wollmuth stated that the Board could continue the public hearing request to the next meeting, and they could ask any questions of the homeowners during that meeting.

Mr. Wohl stated that they could make the shop 32 feet wide instead of 36 feet wide and the problem would be solved.

Mr. Janssen stated this request does not meet the criteria for a hardship.

MOTION: Based on the findings included in the staff report, Mr. Janssen made a motion to deny the 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. The motion was seconded by Mr. Seifert and with Board Members Clark, Wohl, Janssen, Seifert and Marback voting in favor of the motion, the variance was denied unanimously.

VARIANCE FROM 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 ST)

Ms. Wollmuth stated that 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.

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 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.

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

Ms. Clark asked that if this were not in a residential area, would they be able to extend the frame hold time past 9:00 pm?

Ms. Wollmuth replied yes, that would be correct.

Ms. Clark asked if the residential zoning district requirements apply to this parcel even with churches surrounding it, does that have anything to do with the video or effects?

Ms. Wollmuth replied that live action videos are prohibited in the City of Bismarck regardless of the zoning district.

Chair Marback asked if the owner would like to come forward.

Nate Wolf stated that the neighboring residential zoned property is a church, and questioned if the neighbor was a church and not a residential property, that they were caught in the middle of unintended restrictions. He stated they do not plan to utilize strobe lights or ambient lights and they would not be streaming videos, instead including animations of fireworks during the 4th of July, or a turkey at Thanksgiving.

Chair Marback opened up discussion for public hearing.

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

Chair Marback asked what the definition of live action video was.

Ms. Wollmuth stated streaming any kind of video and background animation, as described by the applicant, would be considered live action video.

Ms. Clark moved to grant the request to extend the hold time to 11:00 p.m. and deny the video effects request.

Ms. Clark stated this motion would be based on special circumstances, that this property is different from any other properties in the area, based on surrounding of churches, not residential units.

Mr. Janssen seconded the motion.

Mr. Janssen asked how much it is enhanced or achieved by going from 9:00 pm. to 11:00 pm.

Ms. Clark stated with serving food and drink, she thought it would enhance their business and pull people in.

Mr. Janssen stated that there were residences to the southeast that are impacted by this, and that these folks would be able to see the lights and he didn't want to overlook this.

MOTION: A motion was made by Ms. Clark to grant the request for a 9:00 pm to 11:00 pm. frame hold time and deny the effects of the live action video request. This motion would be based on special circumstances, that the property is different from any other property in the area, based on its surrounding of churches, which is less residential. Mr. Janssen seconded the motion. Board Members Seifert, Wohl, Janssen, Clark and Marback voting in favor of the motion and the variance to allow regular usage until 11:00 pm was approved by the Board, and the request to allow animations, background animations, frame entrances and exits, and other similar effects known as live action video was denied by the Board.

APPEAL OF ZONING DETERMINATION-ALLOWED USES IN CA -- COMMERCIAL ZONING DISTRICT – ARROWHEAD PLAZA (1122 NORTH 3RD STREET) APPL2022-001

Ms. Wollmuth stated the applicant, 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. Staff has reviewed the building plans and project narrative of the proposed archery range and have found that this use closely resembles several 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 use is not a permitted use in the CA – Commercial zoning district.

Ms. Wollmuth gave an overview of the request.

Chair Marback asked if the Board Members had any questions for staff.

Ms. Clark asked if there were any other variances granted that were at this location.

Ms. Wollmuth said she does not recall any within the last 10 years.

Chair Marback asked if the owner would like to come forward at this time.

Justin Hoag stated when he first got started with his archery business, he jumped in and got the ball rolling and he chose Arrowhead Plaza because the space was perfect for his needs. He has been involved in archery his whole life, it has done a lot for him, and he would like to

pass this onto the next generation. Burnt Creek Archery would be a pro shop where you could buy or rent archery supplies and they would also offer archery consulting and coaching. Having the archery range on site would help him serve the public better by providing a space to try out the product. With regards to the location, he has searched all over Bismarck, Arrowhead Plaza was the perfect spot where families would feel safe to drop off their children and women would feel safe going to. He also stated that the parking at this location was an asset. He went on to say that Scheels was once located in Arrowhead Plaza, and they had an archery range; however, it was smaller than Burnt Creek Archery's would be. He said that they have received a lot of community support. Burnt Creek archery will not just be for the archery community; he has reached out to several youth groups such as the 4H club for after school youth programs. Nishu Bowman is an archery range in town, they are in favor of this program because they are full and agree there is a need for an additional archery space. Burnt Creek Archery will be fully accessible with staff on hand should anyone need assistance. He would also offer programs for our Veterans as well as the Wounded Warrior program. Ultimately, he is looking to provide a safe environment for the community to take part in a great family sport.

Ms. Clark stated she wanted to make sure staff interpreted the ordinance correctly and asked what the principal activity would be.

Mr. Hoag stated the principal activity would be the sales and pro shop where he would be fixing equipment, and this would fit well within the existing CA – Commercial zoning district. It is the archery range itself that is not within the zoning ordinance limits. His shop, without the archery range, would be just like Scheels. He is looking to offer more to the community than just selling equipment; he would like to better the community by offering the archery range on site.

Mr. Janssen asked when he purchased the property, if it was correct that he didn't look into what it was permitted for the use of the property.

Mr. Hoag stated that he was brand new to business and leaned hard on people whom he thought would have passed that information on to him in the process.

Mr. Janssen stated that you cannot just buy bowling balls without having a place to throw them, so the sales part of the project goes hand in hand with having the archery range on site.

Chair Marback asked if there were any further questions for Mr. Hoag, and then he opened up discussion for public hearing.

George Yineman, a broker for Rise Property Brokers, stated he conducted an extensive search to find a location for Burnt Creek Archery. Upon their search for a property, the strip mall in Arrowhead Plaza seemed perfect. They signed a lease with Arrowhead Plaza and the project was underway. It was not until they requested a building permit from the City of Bismarck, that they were informed that it was not an allowed use in the CA – Commercial zoning district. He stated that if we do not address this, we will see centers like this die. He went on to say this is a missed opportunity to save strip malls like Arrowhead Plaza and see our community grow. Ms. Wollmuth and Ms. Lee asked them for other examples pertaining to this. He gave eight other examples of strip malls located across the United States with archery ranges located within them; however, none of these were located in North Dakota. He went on to say that it is a great use for this space, to have activities and services for the local neighborhoods. He also stated that the CG – Commercial zoning locations within the community are more expensive, and the MA – Industrial zoning was more affordable; however, these locations are not on the bus route or scooter route to have kids dropped off at, and the property at Arrowhead Plaza is on these

routes. This is the perfect fit for the Board of Adjustment to grant this request and allow Mr. Hoag to open his business.

Chair Marback asked if anyone else would like to come forward at this time.

Cary Schilling stated that he owns the property next to Arrowhead Plaza and will soon live there. He believes that Arrowhead Plaza could use an establishment such as Burnt Creek Archery. Mr. Schilling went on to say that he is grateful that there is a concrete wall in the back of the building, or the arrows may have flown into his back yard. Burnt Creek Archery will be a great asset to the community and that he hopes the Board of Adjustment approves this request.

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

Mr. Seifert asked Ms. Lee to elaborate on the staffs' zoning determination.

Ms. Lee stated the whole city is divided into zoning districts. The CA – Commercial zoning district is a neighborhood commercial district, serving the residents of the surrounding neighborhood. The CG – Commercial district is community wide serving the entire community. The way the zoning ordinance is set up, use groups are either allowed or not allowed in certain zoning districts. The commercial recreation group, in staffs' opinion, would include this facility, and because the CA – Commercial zoning district does not allow the commercial recreation group; however, it is allowed in the CG – Commercial and the MA – Industrial districts.

Mr. Janssen asked if in the future if the CA – Commercial zoning district could be modified.

Ms. Lee said staff have talked about it internally, because we also classify Anytime Fitness in the Commercial Recreation category as well. Staff is currently finishing up the Together 2045 comprehensive plan and it made more sense to finish that first, and then look at updating the zoning ordinance.

Ms. Clark asked if staff found the ordinance was read correctly, and if staff puts a halt to the building process, what kind of appeal process was available.

Ms. Lee stated the applicant could appeal this case to the City Commission. They could also apply for a zoning change as well, but that the owner of the property would have to come in and ask for the zoning to be changed.

Chair Marback asked if there were any other questions for the staff.

Ms. Clark made a motion to uphold the determination made by the staff.

Chair Marback asked for a second motion. There was not one, so he asked the Board members for a second motion or for further discussion.

Ms. Combs asked the Board if this type of entity is not a commercial group use, which use group does it belong in.

Chair Marback stated it could be both public recreation and education use group.

Ms. Lee stated she looked at different use groups within the zoning ordinance and thought the proposed archery range could be classified as the retail group A because they are selling items.

The zoning ordinance does not indicate percentage of space determining a specific use group. For example, with Scheels the majority of what they are doing is sales, but because Burnt Creek Archery's sales square footage is smaller, the closest thing to compare it to is a bowling alley with ball and shoe sales and repair. The Commercial Recreation Group was the closest use group we could find to associate the proposed archery range with.

Chair Marback has asked if we made any variances in the past referring to the CA — Commercial zoning.

Ms. Lee said not that she could recall.

Ms. Clark stated that she wanted to see this be built, but she believes the staff has read the ordinance correctly.

Chair Marback agreed with Ms. Clark stating that the staff had a tough job and that they went above and beyond for Burnt Creek Archery. He believes the staff has determined the zoning ordinance correctly also.

MOTION: Mr. Seifert made a motion to overturn the zoning determination for the reason that the proposed archery range is more a Retail Group A than a Commercial Recreation Group. Mr. Janssen seconded the motion. Board Members Clark, Marback and Wohl voted to oppose the motion with Janssen and Seifert voting to approve the motion. The motion to overturn the zoning determination was not approved.

MOTION: Mr. Wohl made a motion to uphold the zoning determination. Ms. Clark seconded the motion. Board Member Clark, Marback and Wohl voted to approve the motion, with Board Members Janssen and Seifert opposing the motion. The motion to uphold the zoning determination was approved.

APPEAL OF ZONING DETERMINATION – ALLOWED USES IN CG – COMMERCIAL ZONING DISTRICT – Track 712 part of Block 12, Original Plat (712 East Front Avenue)

Ms. Wollmuth stated Wayne Munson, with Bismarck Sign Company, 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 Company 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. 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.

Chair Marback asked the owner of the property to come forward at this time.

Wayne Munson stated he was one of the owners of Bismarck Sign Company, and that the building on this property was built in 1979. He stated Bismarck Sign Company is not your traditional sign company, they do not manufacture lighted or neon signs at their facility. They do not weld, grind or paint onsite to give off any emissions. They purchase and bring in product that they take and install for other commercial buildings. He believes the interpretation is wrong as they do not manufacture. However, they do print at the facility, and Mr. Munson stated United Printing, for example, is located in the CG – Commercial zone. He believes the majority of their business and the quantity of the work they do would be categorized in the CG – Commercial zone. This property fits very well within their needs, and the first plan is to get rid of the silos and clean up the property. They believe because they do not manufacture signs and therefore should be allowed to be in the CG – Commercial zone.

Mr. Seifert asked Ms. Lee knowing that they are not going to manufacture, would that change the zoning.

Ms. Lee stated there is language about assembly and storage, that is why Bismarck Sign Company would be in the Industrial Group A category. Even though they are not manufacturing, they are assembling parts of a sign on site.

Mr. Munson stated they bring in product from a manufacturing facility; they do have storage and store product on site, but the majority of assembly is done at the job site, and not at their facility.

Ms. Clark asked what they are storing at the facility.

Mr. Munson stated at their current facility, you can see a chain link fence, trailers, equipment, and in the background, you can see a wood crate with materials that they take to the jobsite and install.

Mr. Wohl asked if he was a licensed contractor.

Mr. Munson stated yes, he was a licensed contractor.

MOTION: Mr. Wohl made to make a motion to uphold the zoning determination made by the zoning administrator. Mr. Janssen seconded the motion. Board Member Clark, Janssen, Marback, and Wohl voted in favor of the motion, with Board Member Seifert opposing the motion. Motion to uphold the zoning determination has been granted.

**APPEAL OF ZONING DETERMINATION– ELECTRONIC MESSAGE CENTER (EMC) –
OPERATIONAL STANDARDS– Lot 39, Block 1, Bismarck Airport Addition (2301
University Drive, Building 48)**

Ms. Wollmuth stated 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. Ms. Wollmuth explained that

planning staff updated the sign code for the City of Bismarck in July 2020 to balance business interested and public safety. She went on to say requirements outlined in the sign code protect the health and safety of the community, create a content natural 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 for this property, 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. Ms. Wollmuth noted that a copy of the meeting minutes are attached in the packet. She stated staff reviewed the proposed request and 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. She noted that agricultural districts may become a variety of different uses that are presently unknown, and that the sign ordinance conservatively applies the more stringent residential standards.

Chair Marback asked if there were any questions of staff, and then invited Mr. Vetter to come forward.

Paul Vetter, the Chief Operating Officer of Executive Air Taxi stated they have been a commercial business at the Bismack Airport for 49 years. They are located on a highly trafficked University Drive and there is not a residential home in sight. They are surrounded by agricultural areas that he does not see ever becoming residential properties due to the proximity of the airport. Their current sign is off set pretty far from the main road and located lower than the road making it very hard to see. His request is to have a sign larger than their current 32 foot sign. He also stated they are remodeling and updating their entire facility and would like to request an Electronic Message Center (EMC) sign as part of the remodel they are doing. This would be the beautification part of their remodel.

Chair Marback asked how large of a sign would they be looking to get?

Mr. Vetter stated he would like to double the sign to 64 feet.

Mr. Janssen asked where the new sign would be located.

Mr. Vetter stated they would just replace the existing sign.

MOTION: Mr. Seifert made a motion to overturn the zoning determination because the property adjacent to the airport is agricultural, and not likely to be developed as residential. Mr. Wohl seconded the motion with Board Members Clark, Janssen, Wohl, Marback and Seifert all voting in favor of the motion, the motion was unanimously approved.

OTHER BUSINESS

The bylaws were presented with the meeting packet for approval at this time.

MOTION: Ms. Clark made a motion to approve the bylaws. Mr. Janssen seconded the motion with Board Members Clark, Janssen, Wohl, Marback and Seifert all voting in favor of the motion, the motion was unanimously approved.

OATH OF OFFICE

Chair Marback stated they had completed this prior to the meeting.

Ms. Wollmuth stated that was correct and we have moved item 8 to the beginning of the meeting to accommodate our notary public, who was unable to stay to attend the meeting. The Oath's of Office were notarized and would be put in the record.

Chair Marback stated our next meeting would be November 3, 2022.

ADJOURNMENT:

There being other business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:48 p.m. to meet again on November 3, 2022.

Respectfully Submitted,

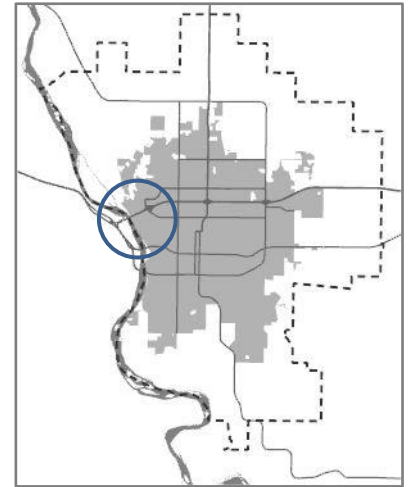
Tracy L. Walters
Recording Secretary

APPROVED:

Michael Marback, Chair

Project Summary

<i>Title:</i>	Tract 3 of Part of Section 31 (1005 River Road), to be platted as Lot 1, Block 1, Technology Hill Addition, and Part of the E½ of the NE¼ of Section 31 (1200 Schafer Street)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Bismarck State College BSC Foundation
<i>Project Contact:</i>	Donald Roethler
<i>Location:</i>	West-central Bismarck, south of Edwards Avenue and west of Schafer Street
<i>Request:</i>	Section 14-04-16(5) of the City Code of Ordinances (P – Public / Side Yard)



Staff Analysis

Bismarck State College (BSC) and BSC Foundation are requesting a variance to eliminate the required side yard setback along the west side of the National Energy Center of Excellence Building and the east side of the Polytechnic Building to allow the construction of a skywalk connecting the two buildings. The proposed skywalk would be located over an existing property line separating the properties.

Both buildings are part of the BSC Campus but located on separate properties. The City's zoning ordinance allows adjacent properties to be combined if they are within the same zoning district and under common ownership. However, the properties cannot be combined as they are under different ownership.

The public has been duly notified of this request, with 60 letters mailed to the owners of nearby properties on January 20, 2023.

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 14-04-16(5) of the City Code of Ordinances (P – Public / Side Yard) states, "Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent the average width of the lot. On any lot having an average width of sixty (60) feet or less, each side yard shall be not less than ten (10) percent of the width of the lot, and in no

(continued)

case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet neither side yard shall be less than six (6) feet in width; provided, however, that for a building thirty-five (35) feet or less in height, neither side yard is required to exceed fifteen (15) in width.”

According to the site exhibit submitted with the application, the proposed skywalk would be located over the existing property line separating the properties occupied by the existing National Energy Center of Excellence building (Part of the E½ of the NE¼ of Section 31 (1200 Schafer Street)) and the new Polytechnic building (Tract 3 of Part of Section 31 (1005 River Road), to be platted as Lot 1, Block 1, Technology Hill Addition), eliminating the required side yard setback between the two properties.

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 P - Public 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.

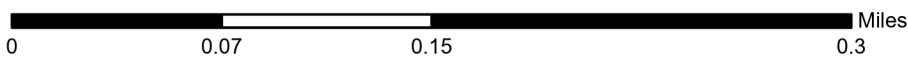
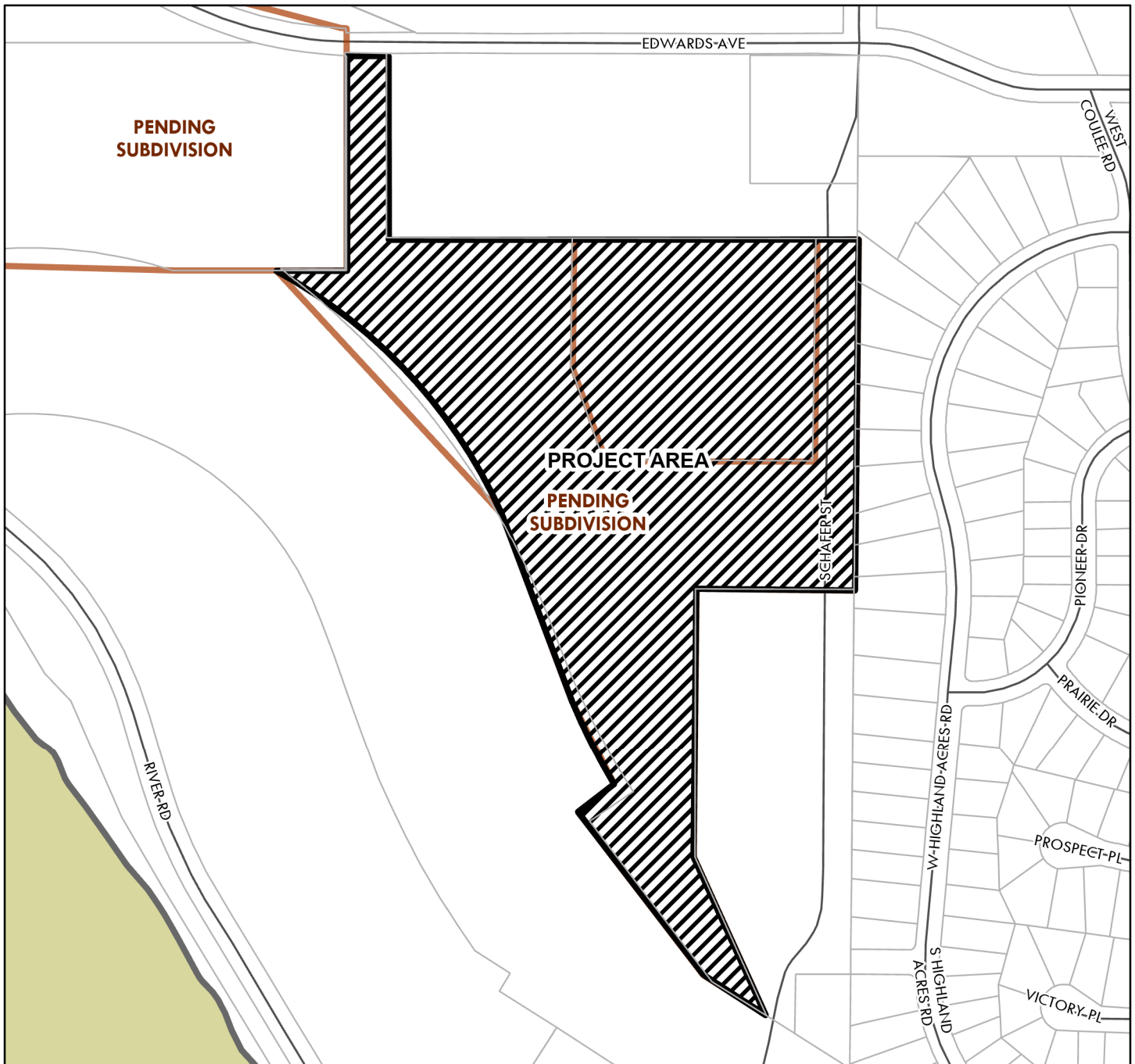
Staff Recommendation

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. Written Statement of Hardship
4. Site exhibit

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

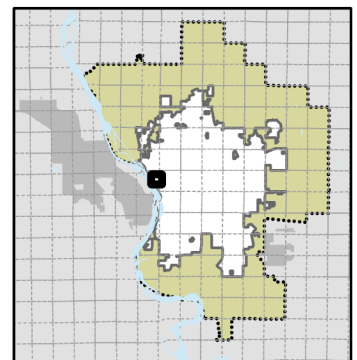


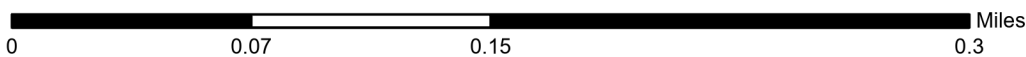
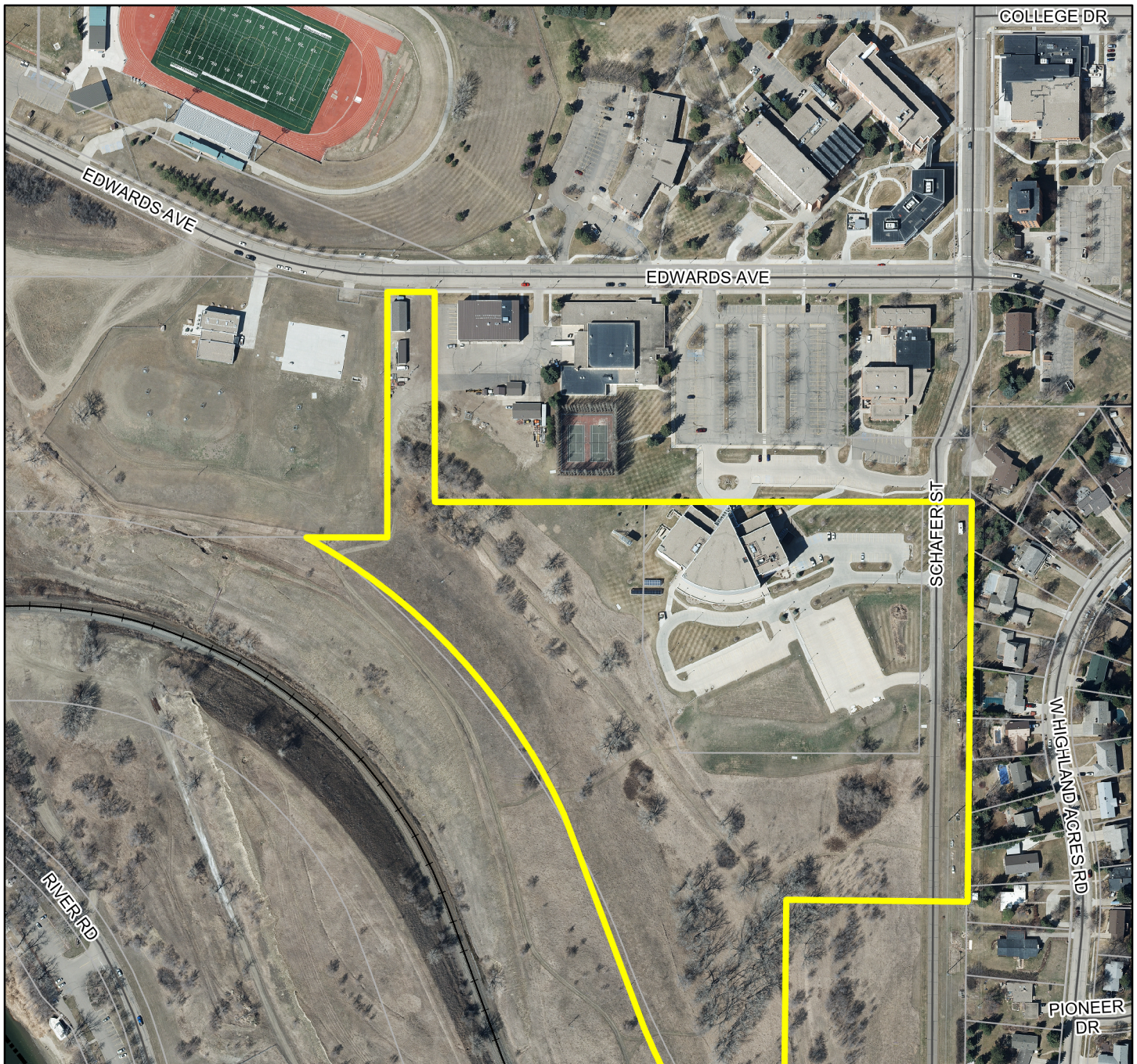
-  City Limits
-  Bismarck ETA Jurisdiction

Section, township, and range indicated in orange

City of Bismarck
Community Development Department
Planning Division
January 27, 2023 (SF)

This map is for representational use only and is not a survey. No liability is assumed as to accuracy of the data shown hereon.



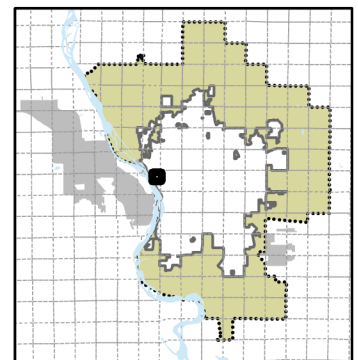


 City Limits  Bismarck ETA Jurisdiction

City of Bismarck
Community Development
Planning Division
January 27, 2023

Aerial Imagery from April 2020

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City of Bismarck
Community Development Department
Planning Division
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PO Box 5503 * Bismarck, ND 58506-5503
planning@bismarcknd.gov

Last Revised: 01/2017

WRITTEN STATEMENT OF HARDSHIP (VARIANCE REQUEST)

RECEIVED
JAN 05 2023

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

PROPERTY INFORMATION

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

Lot 1, Block 1, Technology Hill Addition and Block 31 at 1200 Schafer St

Location of Property:

☒ City of Bismarck

☐ ETA

Type of Variance Requested:

Skywalk Variance with Related Parties

Applicable Zoning Ordinance:
(Chapter/Section)

P Zoning

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.)

Bismarck State College (BSC) is seeking a variance to construct a skywalk from Parcel 160-031-250 to Bismarck State College Foundation (BSC Foundation) Parcel 160-031-300. The BSC Foundation owns Parcel 160-031-300 and leases the property, with the National Energy Center of Excellence building, to BSC. The BSC Foundation is a separate 501(c)(3) and governed by a Board of Trustees. The BSC Foundation's bylaws include Section 1 that states that the Foundation's sole purpose is for the benefit of BSC, it's students, and it's employees. At the conclusion of the 25 year lease and after the MIDA bond is satisfied and completed in 2032, BSC may purchase the property from the BSC Foundation for \$100. Therefore, BSC and the BSC Foundation cannot currently eliminate the lot line between the properties due to separate ownership of the properties.

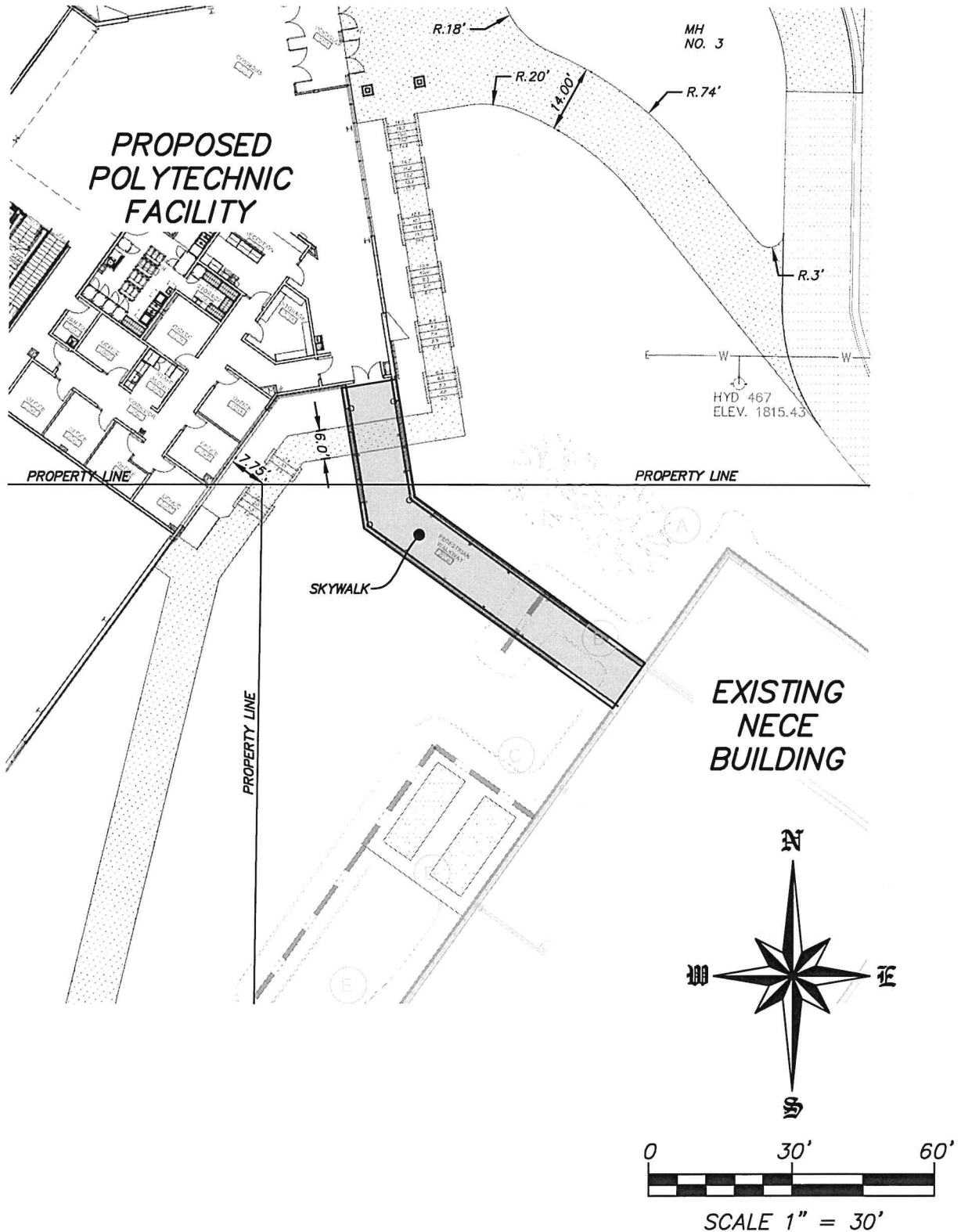
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.

The skywalk that would connect the BSC Property to the BSC Foundation property is critical to the academic programming. The classrooms will be located in the BSC Foundation property and the high-tech flexible labs will be located on the BSC property. This connection allows for equipment to easily transfer directly for the lab to the classroom. With ND harsh winters, the ability to transfer equipment between the labs and the classroom would be very difficult, if not impossible. BSC would be extremely limited on the ability to provide it's Polytechnic programs without the ability to share equipment and space between both facilities. In addition, there will be academic and other events that will utilize space in both buildings and will need to travel back and forth between the buildings in a safe manner. The skywalk will provide an enclosed hallway to prevent slips, trips and falls during the winter months. There are several situations in the City of Bismarck where building skywalks have been allowed such as the hospitals and the Bismarck Banquet Home.

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

Chris Peske, BSC's state attorney, has reviewed the legal aspects of the lease agreement between BSC and the BSC Foundation and has confirmed that it is permissible for BSC to construct the skywalk and connect to the BSC Foundation property. Since the skywalk will cross onto the BSC Foundation property from the BSC property, it is the minimum variance necessary to efficiently and safely utilize both buildings. In 2032, BSC will be able to purchase the property from the BSC Foundation for \$100. The Polytechnic building is funded by the State of North Dakota which included the skywalk in the design. The strict application of the Zoning Ordinance would deprive BSC (State Property) the reasonable use of the property.

**BISMARCK STATE COLLEGE
POLYTECHNIC FACILITY TO NECE SKYWALK**



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