



BOARD OF ADJUSTMENT MEETING AGENDA

July 6, 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.

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MINUTES

1. Consider approval of the minutes of the April 6, 2023 meeting of the Bismarck Board of Adjustment.

PUBLIC HEARINGS

2. **Section 14-04-14(6) of the City Code of Ordinances (MA – Industrial / Front Yard)** Lot 3, Block 1, Jacks First Addition (1105 E Bismarck Expressway) | VAR2023-003

Owner / Applicant: Andrew Johnson, InSite Real Estate Investment Properties, LLC

Board Action: ☐approve ☐continue ☐table ☐deny



OTHER BUSINESS

3. **Other Business.** Election of Officers.

ADJOURNMENT

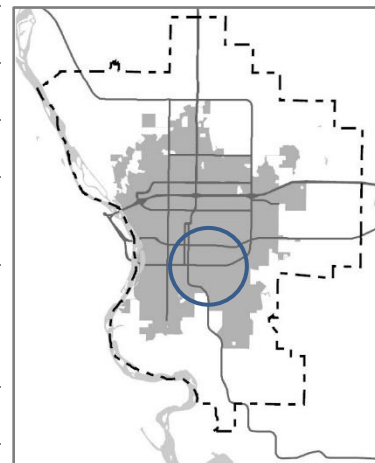
4. **Adjourn:** The next regular meeting date is scheduled for **August 3, 2023.**

Enclosures: Meeting Minutes of April 6, 2023



Project Summary

<i>Title:</i>	Lot 3, Block 1, Jacks First Addition
<i>Status:</i>	Board of Adjustment
<i>Property Owner(s):</i>	KC Land Holdings LLC
<i>Project Contact:</i>	Andrew Johnson, InSite Real Estate Investment Properties, LLC
<i>Project Location:</i>	In south Bismarck, in the southwest quadrant of the intersection of East Bismarck Expressway and South 11th Street
<i>Project Size:</i>	23,442 square feet
<i>Applicant Request:</i>	To reduce the required front yard setback along the north side of the property, adjacent to East Bismarck Expressway, from fifty (50) feet to forty (40) feet for the purpose of constructing a fast-food restaurant



Site Information

Existing Conditions

<i>Lots/Blocks:</i>	1 lot in 1 block
<i>Land Use:</i>	Undeveloped
<i>Future Land Use:</i>	Community Mixed Use (CMU)
<i>Zoning:</i>	MA – Industrial
<i>Uses Allowed:</i>	MA – Light industrial, general commercial, warehouses, manufacturing and shop condos
<i>Max Density:</i>	MA – N/A

Area Information

Property History

<i>Zoning Jurisdiction:</i>	Bismarck City Limits	<i>Zoned:</i>	Pre-1980
<i>Township:</i>	N/A (City of Bismarck)	<i>Platted:</i>	10/2022
<i>Neighborhood:</i>	South 12th Corridor	<i>Annexed:</i>	Pre-1980

Project Narrative

Andrew Johnson, InSite Real Estate Investment Properties, LLC is requesting a variance from Section 14-04-14(6) of the City Code of Ordinances (MA – Industrial / Front Yard) to reduce the required front yard setback along the north side of the property, adjacent to East Bismarck Expressway, from fifty (50) feet to forty (40) feet to construct a fast-food restaurant.

Background Information

This property was re-platted as Lot 3, Block 1, Jacks First Addition in October 2022. The lot is vacant, zoned MA – Industrial and located along a principal arterial roadway (East Bismarck Expressway). A principal arterial roadway provides for rapid movements of relatively large traffic volumes between large land areas, major traffic generators and other arterial roadways.

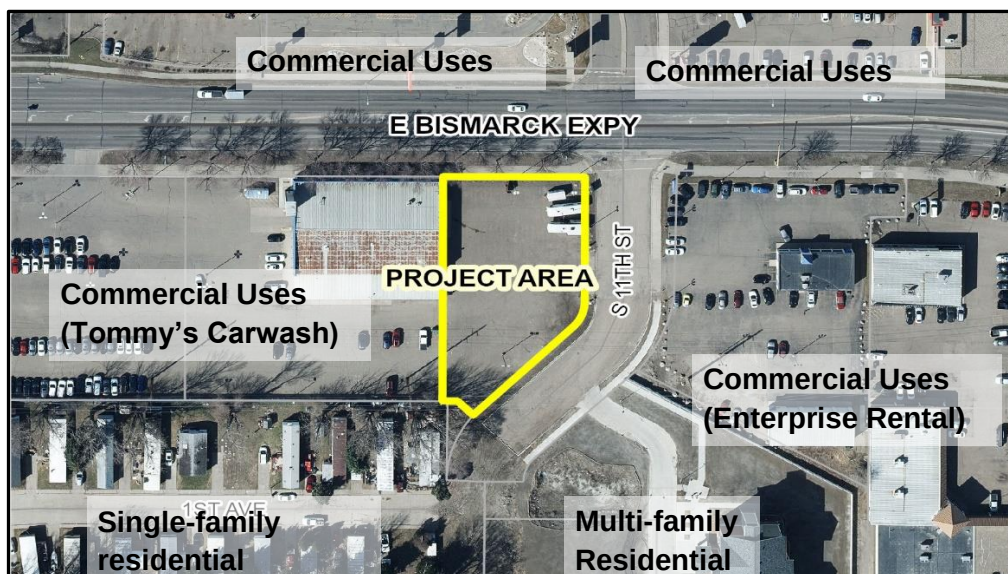
The property includes utility easements that have been in place since the late 1960s and early 1970s. These easements were included on the original plat for this area as well as the replat for Jacks First Addition. The replat also includes additional easements for access, sanitary sewer and stormwater and drainage.

A 50-foot front yard setback for buildings along a principal arterial roadway for properties within the MA – Industrial zoning district has been required since the zoning ordinance was rewritten in 1982. It is likely that this provision was added to the zoning ordinance to preserve areas that may be needed for future roadway widening projects and/or to provide an increased setback on roadways with higher speeds.

The Community Development Department recently initiated a zoning ordinance text amendment to eliminate the required 50-foot front yard setback for properties adjacent to certain principal arterial roadways throughout the city. However, after much discussion with staff from the Engineering Department and the Metropolitan Planning Organization, it was determined that the required 50-foot front yard setback along East Bismarck Expressway should remain. The City Commission approved the zoning ordinance text amendment that identifies specific roadways throughout the community that would continue to have a 50-foot front yard setback, including East Bismarck Expressway, in July 2022.

Project Context

Land uses adjacent to the project area are depicted on the map:



(continued)

Public Engagement

The project is located within Lincoln Township, which is completely disorganized. Therefore, no communications have occurred.

The public has been duly notified of this request, eight letters were mailed to the owners of nearby properties on June 23, 2023. All written comments received by staff prior to the public hearing will be distributed to the Board of Adjustment and summarized by staff during the board meeting.

The applicant has submitted a written statement that identifies their anticipated hardship and explains why they believe the variance should be granted.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard. Pursuant to Section 14-06-02 of the City Code of Ordinances, the Board of Adjustment may vary or adjust the strict application of any of the requirements of the zoning ordinance in case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical, by reason of which the strict application of the provisions of the zoning ordinance would result in an unnecessary hardship that would deprive the owner of a reasonable use of land or building involved, but in no other case.

No adjustment in the strict application of any provisions of the zoning ordinance shall be granted by the Board of Adjustment unless it finds the following:

That there are special circumstances or conditions fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not ([Goal G10-f](#)).

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

That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare ([Goal S10-a](#)).

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

Attachments

1. Zoning Plan and Reference Map
2. Written Statement of Hardship
3. Proposed Site Exhibit

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner

355-1845 | jwollmuth@bismarcknd.gov



Zoning and Plan Reference Map

VAR2023-003

LOT 3 BLOCK 1 JACKS FIRST ADDITION

Zoning Districts

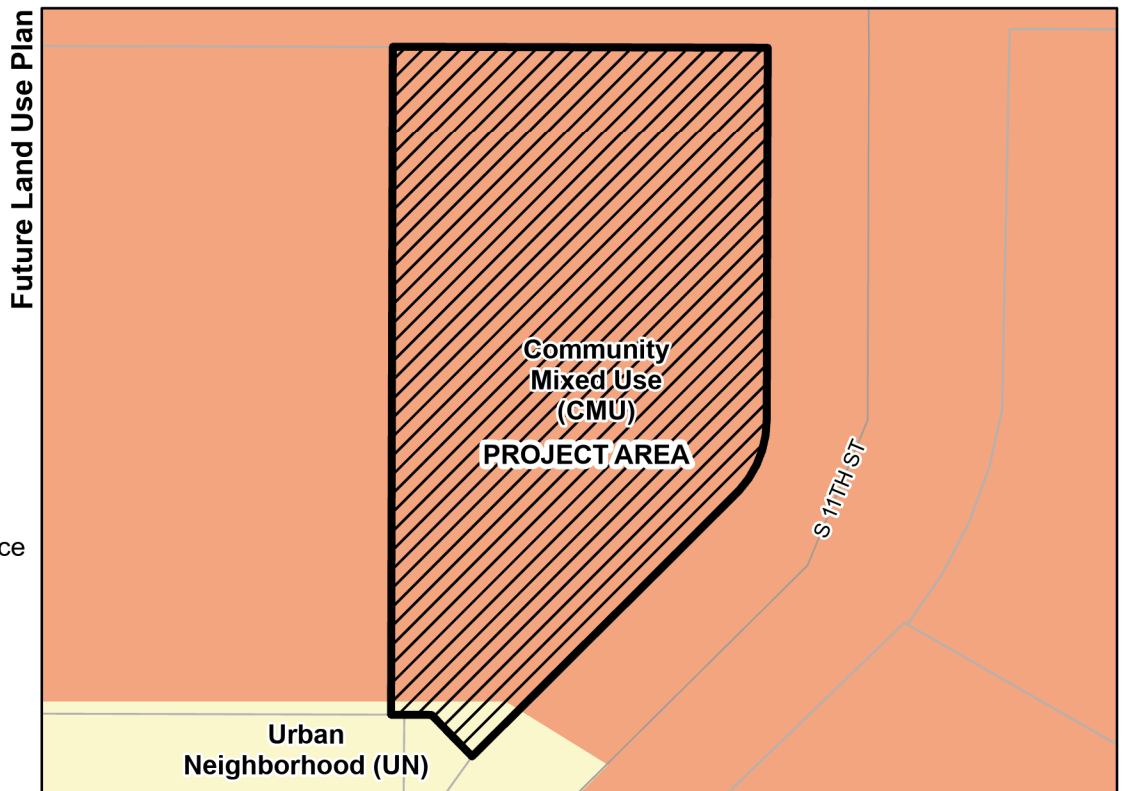
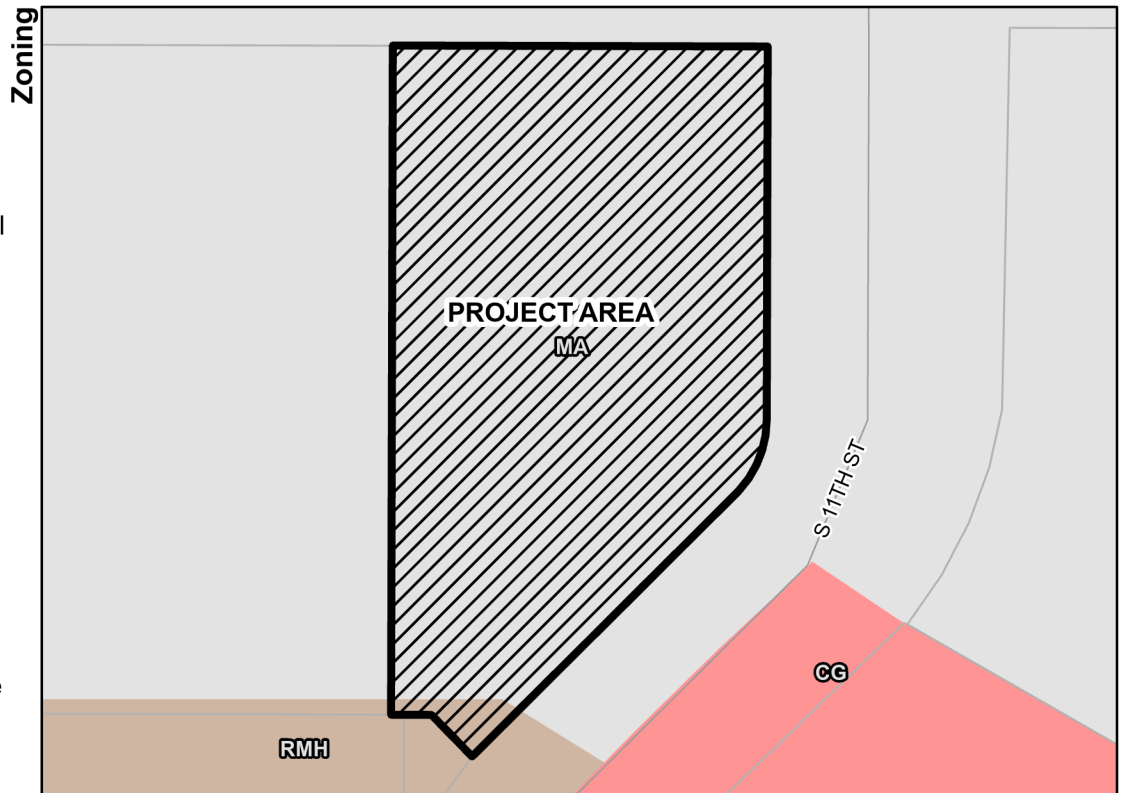
A	Agriculture
RR	Rural Residential
R5	Residential
RMH	Manufactured Home Residential
R10	Residential
RM	Residential Multifamily
RT	Residential (Offices)
HM	Health and Medical
CA	Commercial
CG	Commercial
MA	Industrial
MB	Industrial
PUD	Planned Unit Development
DC	Downtown Core
DF	Downtown Fringe

Future Land Use Plan

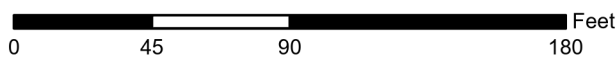
UN	Urban Neighborhood
NMU	Neighborhood Mixed Use
CMU	Community Mixed Use
DMU	Destination Mixed Use
DT	Downtown
IND	Industrial
IF	Industrial Flex
IMU	Industrial Mixed Use
INS	Institutional
RR	Rural Residential
TR	Transitional Rural
PKOS	Parks/Open Space
	Urban Reserve
URA/	Mid/Long-Term
URB	

Major Street Plan

—	Existing Arterial
- -	Future Arterial
—	Existing Collector
- -	Future Collector
—	Existing Interstate
- -	Future Interstate



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 of Bismarck
Community Development
Planning Division
June 28, 2023



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)

1105 South 11th Street, Bismarck, North Dakota 58504

Location of Property:

☒ City of Bismarck

☐ ETA

Type of Variance Requested:

Front Yard Setback

Applicable Zoning Ordinance:
(Chapter/Section)

MA - Industrial District

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.)

There are two (2) separate 75' Transmission Line Easements along the southern portion of the property - one (1) granted to Montana Dakota Utilities (MDU) and the second granted to the United States Department of Energy (USDOE). Permanent structures are not allowed within either easement area. In addition, the site plan is adhering to the existing 30' cross-access easement along the southern portion of the property.

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

Given the existing easement constraints, there is not a viable location for the proposed building that meets the 50' setback requirement.

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

The current site plan locates the building as far south as possible given the existing easement requirements, however, the front facade of the building is located 10' within the setback along Bismarck Expwy. The setback requirement is 50', but the front of the building is located 40' from the frontage property line.

PROPERTY PLAN
LOCATION: 1101-1105 S 11TH ST
BISMARCK, ND
CONCEPT PLAN (V10)
06/08/2023

SITE DATA			
JURISDICTION	CITY OF BISMARCK		
ZONING DISTRICT	MA: LIGHT INDUSTRIAL		
PERMITTED USE(S)	FOOD SERVICE ESTABLISHMENT DRIVE-IN REQUIRES SPECIAL USE		
LOT AREA	± 23,879 SF (± .55 ACRES)		
BUILDING AREA	1,997 SF		
F.A.R.	CODE N/A PLAN .084		
SETBACKS			
BUILDING SETBACKS	CODE	PLAN	
- FRONT YARD	50' (ARTERIAL)	40' (BISMARCK)	VARIANCE
- CORNER SIDE YARD	15'	31' (S 11TH)	
- INTERIOR SIDE YARD	NONE	55' (W)	
- REAR YARD	30' ABUTS R	124' (S)	
PARKING SETBACKS			
- FRONT YARD	6'	6' (BISMARCK)	
- CORNER YARD	6'	6.5' (S 11TH)	
- INTERIOR SIDE YARD	6'	6' (W)	
- REAR YARD	10'	42' (S)	
SIGNAGE SETBACK	15'	15'	
OFF STREET			
AUTO PARKING	COUNT WITH		
ADA STALL			
PARKING SIGNAGE			
DRIVE AISLE			
DRIVE-THRU			
INTERIOR LIGHTING	REQUIRED		
BUILDING HEIGHT			
ADDITIONAL			
DRAWN BY:			

OFF STREET PARKING REQUIREMENTS			
AUTO PARKS STALL COUNT WITH RATIO	7 (1 PER 60 SF OF DINING AREA (BASED ON 402 SF))	8 (4.0 / 1000 SF)	
ADA STALL COUNT	1	1	
PARKING STALL SIZE	9' X 18'	9' X 18'	
DRIVE AISLE WIDTH	TBD	SEE PLAN	
DRIVE-THRU STACKING	12 FROM PICKUP	13	
INTERIOR LANDSCAPING	N/A	N/A	
REQUIRED ISLANDS	N/A	N/A	
BUILDING HEIGHT	75'	TBD	
ADDITIONAL NOTES	1. 80% MAX IMPERVIOUS SURFACE: 66.5%		
DRAWN BY:	BM		

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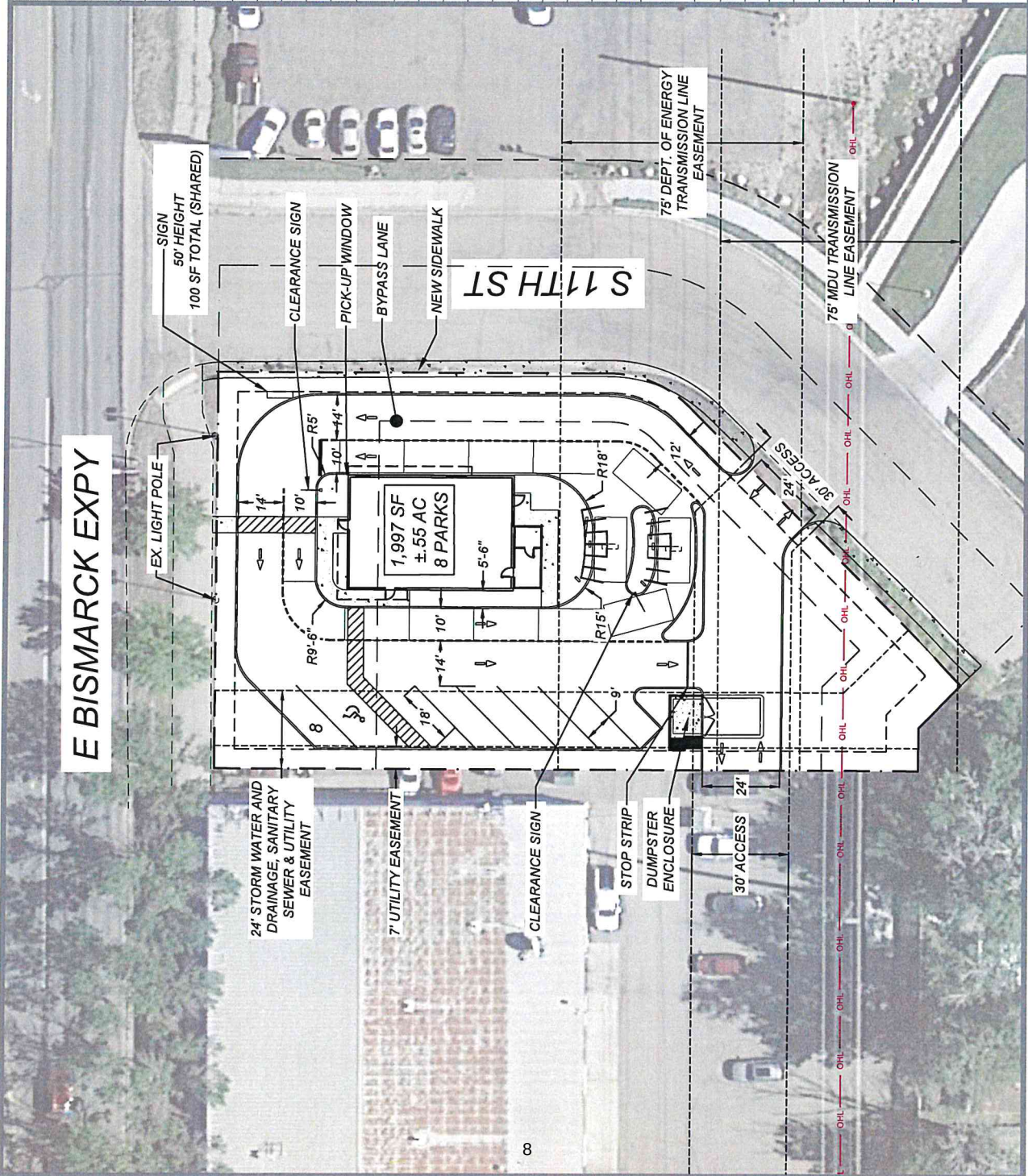
30'

60'

N

InSite

1400 16th Street, Suite 300
Oak Brook, IL 60523-9854
Office: 630.617.9100
www.insiteestate.com



**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
April 6, 2023**

The Bismarck Board of Adjustment met on April 6, 2023, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Vice Chair Clark presided via Zoom.

Board members present were Curtis Janssen, Rick Wohl, Chris Seifert and alternate Ken Hoff. Vice Chair Jennifer Clark appeared remotely.

Member absent was Michael Marback.

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

ELECTION OF OFFICERS AND OATHS OF STAFF:

Vice Chair Clark stated that she would like to postpone the election of officers until all Board members were present and asked for a motion from the Board.

MOTION: A motion was made by Mr. Seifert to postpone the elections of the Board of Adjustment until all Board members are present. The motion was seconded by Mr. Wohl. Board Members Clark, Janssen, Seifert, Wohl and Hoff all voted in favor and the motion was approved.

Vice Chair Clark asked if the Oaths of Office could be done at the end of today's meeting.

Ms. Wollmuth stated that Mr. Seifert had completed his Oath of Office prior to the meeting and no further action of the Board was required.

MINUTES:

Vice Chair Clark called for approval of the minutes of the March 2, 2023 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Janssen and seconded by Mr. Wohl to approve the minutes of the March 2, 2023 meeting. Board Members Clark, Janssen, Seifert, Wohl, and Hoff all voted in favor and the minutes were approved.

VARIANCE FROM SECTION 14-04-10(5) OF THE CITY CODE OF ORDINANCES (OFF – STREET PARKING AND LOADING / DESIGN STANDARDS FOR REQUIRED OFF – STREET PARKING AND LOADING SPACES) LOT 19, BLOCK 1, NORTHERN PLAINS COMMERCE CENTRE SECOND ADDITION (2103 TRADE STREET).

Ms. Wollmuth stated the applicant, Dale Demaray, Lafarge Holcim is requesting a variance from Section 14-03-10(5) of the City Code of Ordinances (Off-Street Parking and Loading / Design Standards for Required Off-Street Parking and Loading Spaces) to eliminate the requirement to pave the access to the paved required parking on Lot 19, Block 1, Northern Plains Commerce Centre Second Addition (2103 Trade Street).

Ms. Wollmuth gave an overview of the request including the following review standards:

- That there are special circumstances or conditions fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- That the grant of the variance will be in harmony with the general purposes and intent of this article and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse, and the landowner must re-apply.

Ms. Wollmuth went on to say that the applicant has submitted a written statement that identifies their anticipated hardship and explains why they believe the variance should be granted. She also noted that the public has been notified of this request; six letters were mailed to the owners of nearby properties on March 23, 2023. Ms. Wollmuth asked the Board to review the review standards, identify a hardship and modify the review standards or findings to support their decision.

Mr. Wohl asked if this variance was due to the lapsing of twenty-four months of the approved variance in 2019 and because the new structure is going to be smaller than the original 5,000 square foot structure that was originally approved in 2019, would the original variance still be in effect today.

Ms. Wollmuth stated that in 2021 during the City's site plan review, staff notified the applicant that if additional buildings were going to be constructed on site that they would have to come back to the Board for additional approval as the scope of work has changed.

Ms. Clark asked if there were any other questions for staff, seeing none, she invited the applicant to come forward.

Abe Ulmer, Independent Land Surveying & Engineering Inc., stated back in 2021 the building was changed from a 5,000 square foot building to a temporary building, and now there is a need to add a new permanent 2,800 square foot structure on site to create a shop, extra storage and office space. The main reason for the variance request is that having to pave the parking lot, the pavement will have extra maintenance over time. The crushed asphalt works very well for the heavy loading of the bulk cement trucks and distributors driving on the parking lot.

Mr. Janssen asked if they have crushed concrete now and what maintenance is currently required.

Mr. Ulmer replied they will run a blade over the crushed concrete. If they were required to have asphalt, they would have additional street maintenance repairs and if they have the crushed concrete, its easier and more cost effective to blade it over and maintain it.

Mr. Janssen asked if crushed concrete was a problem for driving in the winter.

Mr. Ulmer stated they would do something temporary in the winter months.

Mr. Hoff stated he would like to ask Mr. Demaray, Lafarge Holcim's owner, to explain why they put in a temporary building instead of the 5,000 square foot structure that was originally approved in the 2019 variance.

Ms. Clark invited the owner to speak.

Dale Demaray, Lafarge Holcim, explained that the temporary building that they have now has a temporary permit. They have used up the time for temporary permit and now want to be compliant with the City of Bismarck's ordinance. They also had to get the funding from corporate to construct the permanent building, with that secured they are now ready to proceed with the permanent structure on the property.

Vice Chair Clark asked for clarification from staff stating that it was her understanding that the pavement of the access road was related to the order of construction of the buildings.

Ms. Wollmuth replied that the variance is to eliminate the pavement requirement from Trade Street. She stated that in 2019, the previous variance was in conjunction with the 5,000 square foot building that was not constructed. Staff approved a site plan back in 2021 for two separate buildings that were smaller than the 5,000 square feet building and that any additional changes of the scope of work would need to go thru the variance process again.

Vice Chair Clark asked for any testimony from the public, seeing none, she asked the Board for their wishes.

Mr. Wohl stated that most commercial properties have street frontage and this site has a unique situation in which there is 1/3 mile of driveway from the public street to the Trade Street building.

MOTION: Mr. Wohl moved to approve the variance based on the unusual configuration of the lot which requires a longer distance than usual to access the usable portion of the property and stated that due to the unusual shape of the property, this would be the minimum variance requirement to make use of the property. Mr. Seifert seconded the motion with Board members Wohl, Seifert, Janssen, Hoff and Clark all voting in favor of the motion, the variance was approved.

Vice Chair Clark stated that the variance is now final and will need to be completed within two years of the approval date.

STAKEHOLDER SELECTION: SELECTION OF BOARD OF ADJUSTMENT MEMBER TO STEAKEHOLDER GROUP FOR REVISIONS TO SECTION 14-04-19 OF THE CITY CODE OF ORDINANCES (FP – FLOODPLAIN)

Ms. Wollmuth stated that a stakeholder group comprised of industry professionals, Board members, the Mayor of Bismarck, the Chairman of the Planning and Zoning Commission and a member of the Board of Adjustment is also needed for the committee. Planning staff has been directed to make zoning changes to the floodplain requirements in the zoning ordinance and stated a Board of Adjustment member is requested to be present among the group. She noted

that she had a previous discussion with Chair Marback and he has suggested Board Member Chris Seifert to be elected for the Stakeholder Selection Group.

Vice Chair Clark asked Mr. Seifert if he would have any objections.

Mr. Seifert stated he would accept the nomination.

MOTION: Mr. Hoff made a motion for Board member Seifert to be selected for the Stakeholder Selection Group. Mr. Janssen seconded the motion with Board members Janssen, Seifert, Wohl, Hoff and Clark voting in favor of the motion, Mr. Seifert was elected to the Stakeholder Selection Group.

ADJOURNMENT:

There being no further business, Vice Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 5:23 p.m. to meet again on May 4, 2023.

Respectfully Submitted,

Tracy L. Walters
Recording Secretary

APPROVED:

Michael Marback, Chair