



BOARD OF ADJUSTMENT MEETING AGENDA

October 5, 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 planning@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 planning@bismarcknd.gov at least one business day before the meeting.

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MINUTES

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

PUBLIC HEARINGS

2. **Section 14-04-01(4) of the City Code of Ordinances (RR – Residential / Front Yard)** Lot 7, Block 5, Northridge Estates Second Subdivision (8010 Northwood Drive) | VAR2023-004

Owner / Applicant: Cody and Jessica Clark

Board Action: ☐approve ☐continue ☐table ☐deny



OTHER BUSINESS

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

ADJOURNMENT

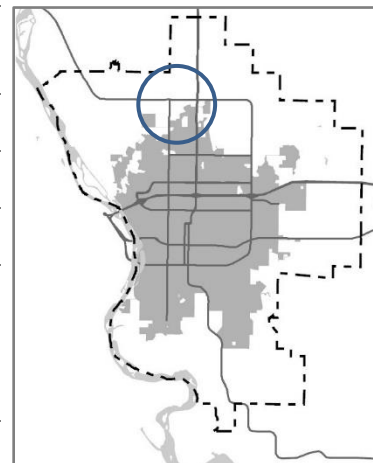
4. **Adjourn:** The next regular meeting date is scheduled for **November 6, 2023.**

Enclosures: Meeting Minutes of July 6, 2023



Project Summary

<i>Title:</i>	Lot 7, Block 5, Northridge Estates Second Subdivision
<i>Status:</i>	Board of Adjustment
<i>Property Owner(s):</i>	Cody and Jessica Clark
<i>Project Contact:</i>	Cody and Jessica Clark
<i>Project Location:</i>	Northwest of Bismarck, west of US Highway 83, between ND Highway 1804 NW and 84th Avenue NW, along the west side of Northwood Drive (8010 Northwood Drive)
<i>Project Size:</i>	1.98 acres
<i>Applicant Request:</i>	To reduce the required front yard setback along the east side of the property, adjacent to Northwood Drive from forty (40) feet to approximately twenty-three (23) feet for the purpose of constructing an accessory structure



Site Information

Existing Conditions

<i>Lots/Blocks:</i>	1 lot in 1 block
<i>Land Use:</i>	Undeveloped
<i>Future Land Use:</i>	Rural Residential (RR)
<i>Zoning:</i>	RR – Residential
<i>Uses Allowed:</i>	RR – Large lot single-family residential and limited agriculture
<i>Max Density:</i>	RR – 1 unit per 65,000 square feet

Area Information

Property History

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)	<i>Zoned:</i>	05/2003
<i>Township:</i>	Hay Creek (organized)	<i>Platted:</i>	05/2003
<i>Neighborhood:</i>	Northridge	<i>Annexed:</i>	N/A

(continued)

Project Narrative

Cody and Jessica Clark are requesting a variance from Section 14-04-01(4) of the City Code of Ordinances (RR– Residential / Front Yard) to reduce the required front yard setback, along the east side of their property adjacent to Northwood Drive from forty (40) feet to approximately twenty-three (23) feet for the purpose of constructing an accessory building.

Background Information

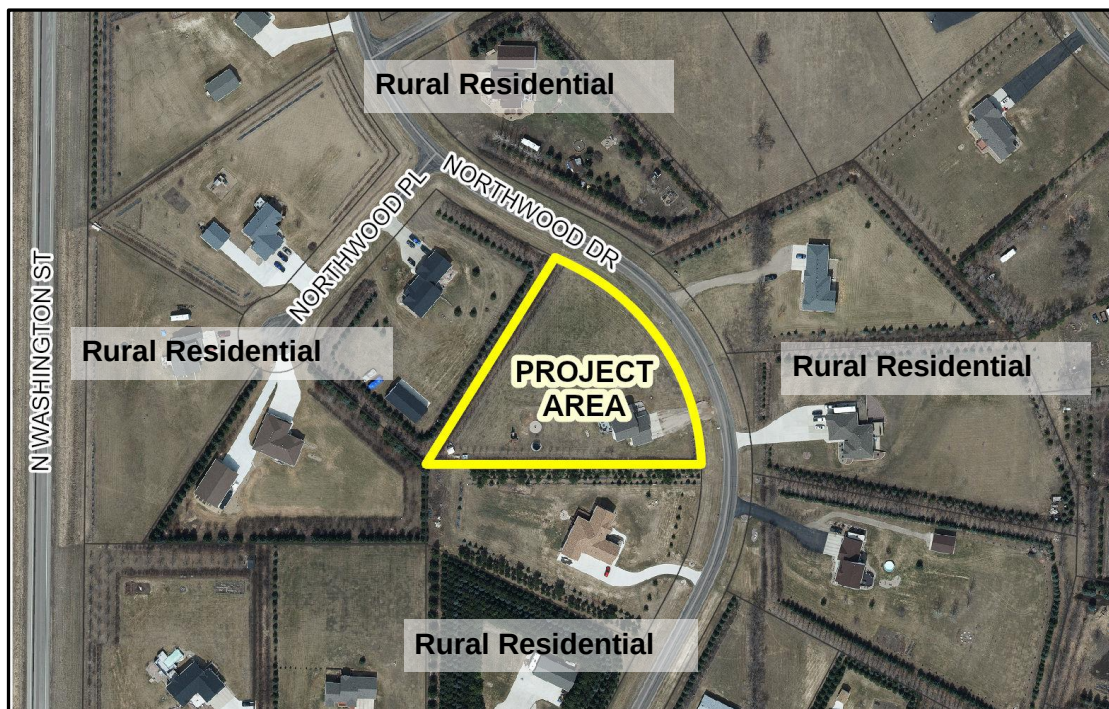
The accessory building is currently under construction. A building permit indicating the required 40-foot front yard setback was issued on June 1, 2023. A copy of the permit is attached.

A member of the Building Inspection Division passed an inspection for the siting of the building and to pour the concrete floor on June 30, 2023. It was discovered in August that the building did not meet the required setback and that the setback measurement was taken in error from the road, not the property boundary.

The City's zoning ordinance states that setbacks are measured at the closest point between a building or structure and property boundary.

Project Context

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



The property has been identified as Rural Residential (RR) in the Future Land Use Plan. The RR areas are places for country living with convenient proximity to city life. Goals and objectives of this plan as they relate the proposed variance are referenced in review standards below.

Public Engagement

The Hay Creek Township was notified of this request on September 19, 2023. The township has not yet made a recommendation regarding this request.

(continued)

62 letters were mailed to the owners of nearby properties on September 22, 2023.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

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. Site Exhibits
4. Building Permit

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



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)	8010 Northwood Dr
Location of Property:	☒ City of Bismarck ☐ ETA
Type of Variance Requested:	Front Yard Set Back
Applicable Zoning Ordinance: (Chapter/Section)	Title 14, Rural Residential Subdivision

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.)

The shop's current location optimizes the rural property's flow and functionality. It ensures a logical and efficient driveway layout, contributing to the usability and aesthetics of our property. Moving the structure to comply with the strict ordinance would disrupt this functionality and require a second approach. Secondly, our property faces a higher risk of flooding during snowmelt. Placing the shop where it currently stands minimizes this risk, enhancing the property's safety and usability. The Zoning Ordinance's requirements do not account for this unique vulnerability. Lastly, the presence of a significant stormwater easement on the north side of our property influenced our decision to place the shop where it is. Adhering to the ordinance's strict requirements would interfere with this vital stormwater management feature. In summary, a reversal of the approved permit would unreasonably limit our property's use by disregarding its unique physical and topographic characteristics, which guided our initial placement decisions.

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

Placing the shop in a different location, as dictated by the Zoning Ordinance requirements, would disrupt the flow of our driveway and the overall functionality of the property. The current placement was selected to ensure an efficient and logical layout of the property, allowing for the smooth flow of vehicles and maintaining the integrity of our main yard without disruption to the easement. The strict application of the ordinance would render our property less functional and less suitable for its intended use. Complying with the Zoning Ordinance's demand for shop relocation would impose significant economic and practical hardships on us. The costs associated with altering the property layout and relocating the shop are substantial. Moreover, at the time of inspection the city recognized the topographical and property challenges and approved the current location. The logistical challenges and disruption of our property's use during this process creates undue hardship.

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

Permits were approved and issued by city inspectors who visited our property and validated our project's compliance with city regulations. The fact that they approved the project's location serves as a strong indication that the current placement of the shop is reasonable and aligns with the intended use of the property. The location as it stands today does not negatively impact our neighbors, existing easements, or any line of sight for vehicles utilizing our street. Our construction project is already over 50% complete, and significant financial resources and effort have been invested based on the previously approved permits. Given the time of year, to require a more substantial deviation from the current structure placement would not only be impractical but also financially burdensome. The variance requested represents the minimum deviation necessary to enable reasonable use of the property and would allow us to use the property in a manner consistent with the city's approval and inspection process.

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	

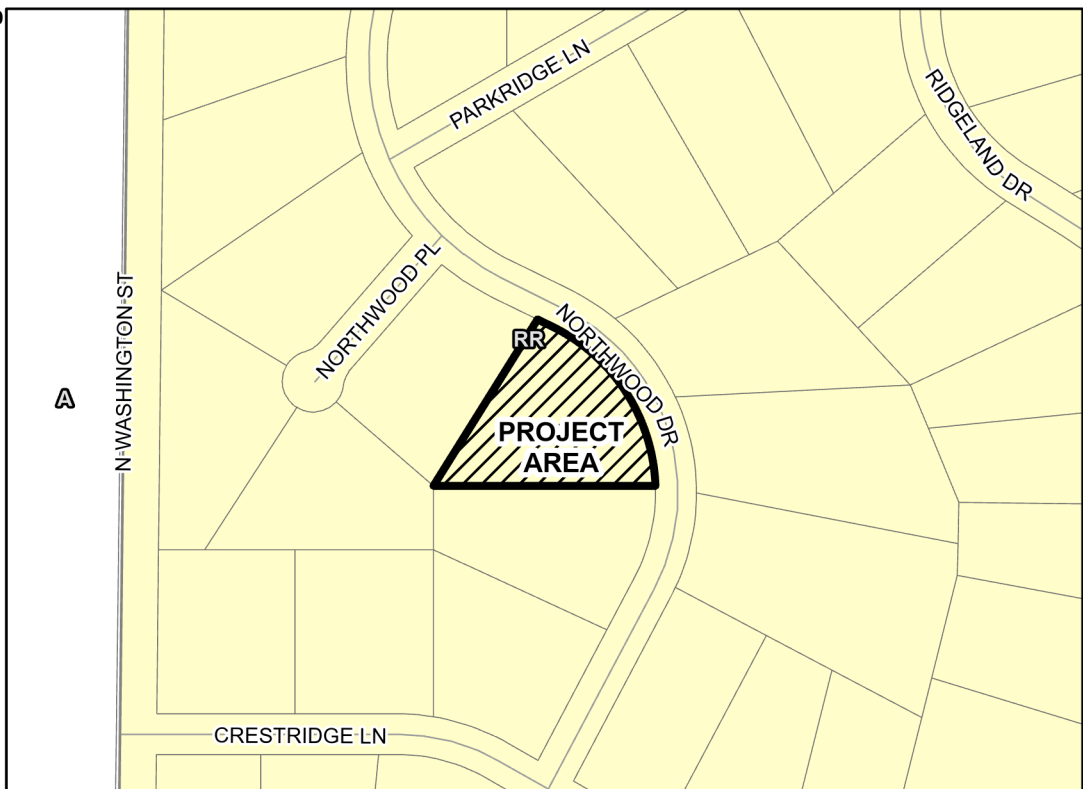
Active Mobility Plan

— Future Shared Trail

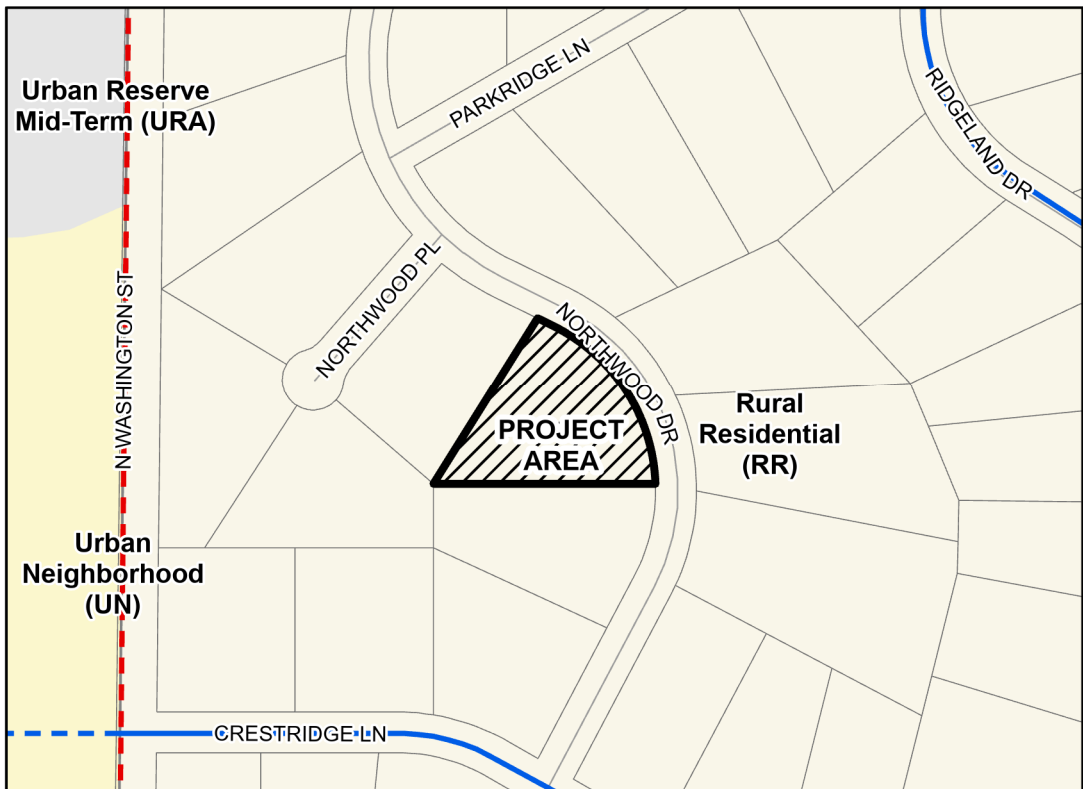
Major Street Plan

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

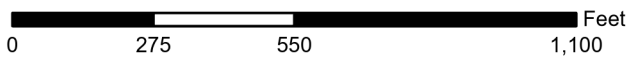
Zoning



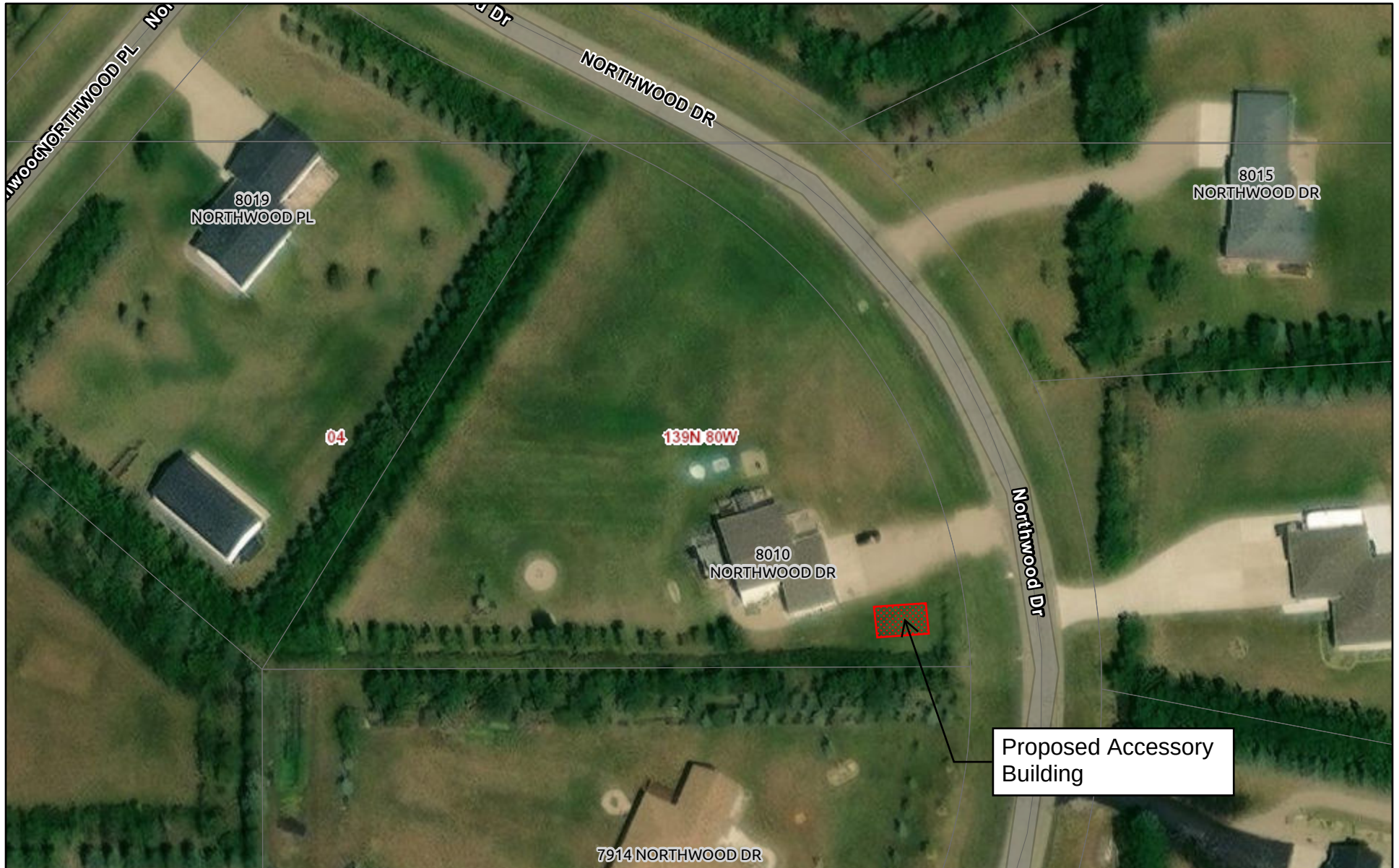
Future Land Use Plan



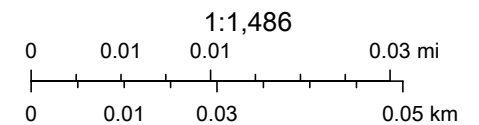
This map is for representational use only and does not represent a survey.
 No liability is assumed as to the accuracy of the data delineated herein.



Community Development Map



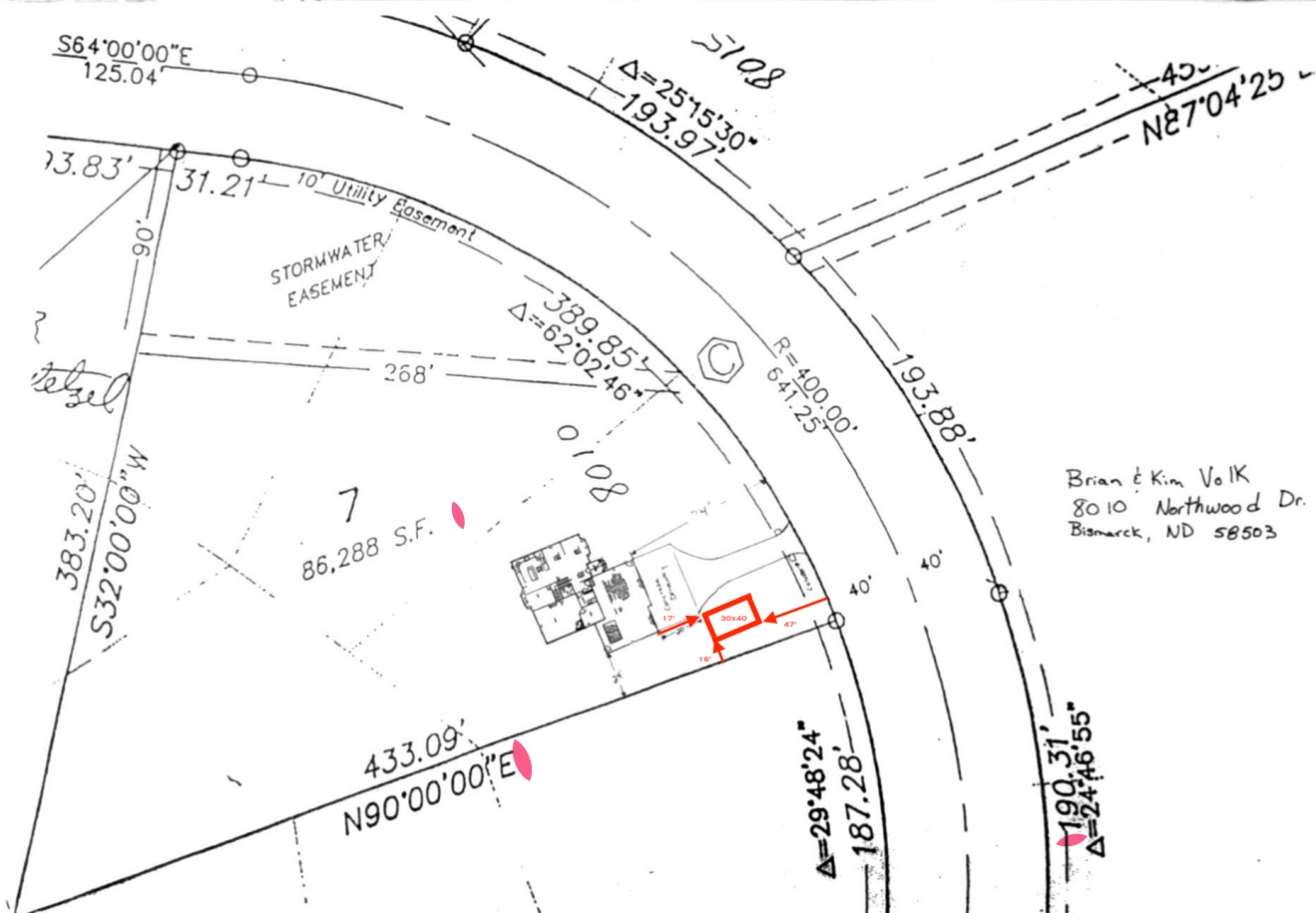
9/19/2023



Maxar, Microsoft, Compiled by the Bureau of Land Management (BLM),
National Operations Center (NOC), OC-530., Esri Community Maps

I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY
BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE 07/26/05 SIGNATURE [Signature]





BUILDING RESIDENTIAL
ACCESSORY BUILDING

Permit: BRES2023-0269
Approved By: ACAR
Issued Date: 6/2/2023
Expiration Date: 2/11/2024
Permit Fee: \$b \$

Bismarck Community Development Department *Building Inspections

221 North 5th Street * PO Box 5503 * Bismarck, ND 58506-5503 * www.bismarcknd.gov * Phone: 701-355-1465 * Fax: 701-222-6450

Owner: CLARK, CODY & JESSICA

Contractor: KARCH CONSTRUCTION

Address: 8010 NORTHWOOD DR

Phone Number: 7015162682

Location: BISMARCK ETA

Front Yard Set Back: 40'

Property Number: 31-139-80-65-05-070

Rear Yard Set Back: 50'

Legal Description:

Side Yard Set Back: 15'-15'

Easements:

Description of Work: 30'x40'x10' accessory building

Additional Notes:

Work under this permit must commence within 180 days of permit issuance. Property lines must be clearly marked for all new construction, additions, and accessory buildings, and decks. Permittee must comply with all codes and ordinances applicable to work. Issuance of the permit does not grant any authorities to erect, modify, or use any structure in violation of any code or ordinance. All required inspections, including a final inspection, must be requested by the Permittee. In consideration for connection to City utilities, Permittee agrees to pay all applicable utility fees and charges pursuant to City Ordinance. This permit creates no warranties with regard to construction or code compliance. The inspections under this permit are for the benefit of the public and not the Permittee and the inspections do not create a duty to the Permittee, this owner, or to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform to the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities.

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

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

Board members present were Curtis Janssen, Jennifer Clark, Chris Seifert, Michael Marback and alternate Ken Hoff.

Member absent was Rick Wohl.

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

MINUTES:

Chair Marback called for approval of the minutes of the April 6, 2023 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the April 6, 2023 meeting. Board Members Clark, Janssen, Seifert, Hoff, and Chair Marback all voted in favor and the minutes were approved.

VARIANCE FROM 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).

Ms. Wollmuth stated the applicant, 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. The proposed variance is in south Bismarck, in the southwest quadrant of the intersection of East Bismarck Expressway and South 11th Street.

Ms. Wollmuth also stated this property was recently replatted, is zoned MA - Industrial and is currently vacant. The property includes utility easements that have been in place since the 1960s and 70s and has newer easements for access, sanitary sewer, stormwater and drainage.

She went on to say this property is also along East Bismarck Expressway, which is classified as a principal arterial roadway and a fifty (50) feet front yard setback for buildings along this type of roadway is required. This requirement has been in place since the zoning ordinance was re-written in 1982 and it is likely that this requirement was added to preserve areas that may be needed for future roadway widening projects and to provide an increased clear area adjacent to roadways with higher speeds. A principal arterial roadway provides for rapid movements of large traffic volumes.

Ms. Wollmuth also noted that the Community Development Department recently initiated a zoning ordinance text amendment to eliminate the required fifty (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 fifty (50) feet front yard setback along East Bismarck Expressway should remain.

Ms. Wollmuth included the following review standards:

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 condition, 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.

Ms. Wollmuth went on to say 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 that do not apply generally to land or buildings within the neighborhood and have not resulted from any act of the applicant.
- That the strict application of the provisions of this article the zoning ordinance would deprive the applicant of the reasonable use of said land or building, 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, the zoning ordinance 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 also stated 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; eight letters were mailed to the owners of nearby properties on June 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.

Chair Marback asked if there were any questions of staff.

Mr. Janssen asked when they re-evaluated and they chose certain areas to adjust the setback, what is the main reason to have the setback at fifty (50) feet.

Ms. Wollmuth stated that staff from the Metropolitan Planning Organization, City Planning, and City Engineering opted to keep the fifty (50) foot set back is because it is part of the I-94 Business Loop.

Chair Marback asked if there were any more questions of staff, hearing none, he invited the applicant to come forward.

Joe Nolan, InSite Real Estate Investment Properties, LLC, came forward at this time and Andrew Johnson, InSite Real Estate Investment Properties, LLC, appeared remotely. Mr. Nolan stated the southern portion of the property is being served by two separate seventy-five (75) foot easements with the US Department of Energy, and Montana Dakota Utility Company (MDU). He stated within these two easements, no permanent structures can be permitted and they believe the only viable option would be to place the property in the front yard setback.

Andrew Johnson stated they have worked with City staff to review the site and they have made several adjustments. He understands there are some concerns with the request to encroach ten (10) feet into the required setback initially because of potential future improvements on Bismack Expressway. He has spoken with City Engineering, and they confirmed there are no plans to implement any improvements to Bismarck Expressway at this time. Mr. Johnson stated that he feels that the two transmission line seventy-five (75) foot easements are shrinking the property and this is their hardship.

Chair Marback asked if that is the smallest building that they could operate out of.

Mr. Nolan stated yes, this is the smallest building the owner has approved for this site.

Mr. Janssen asked if they could eliminate one of the two proposed drive-thru lanes.

Mr. Nolan stated he has done a single drive-thru in the past, but due to covid, their client is very particular about having two drive-thru lanes.

Mr. Janssen asked if they could eliminate a drive-thru and shift everything down. He suggested that they would not have to have a variance and it would be able to meet the fifty (50) foot setback.

Mr. Johnson stated the easements in southern portion of the map would affect the ordering board if they eliminated a drive-thru lane and shifted everything south.

Ms. Clark asked if there were other building options that their client would peruse that we have not discussed yet.

Mr. Nolan stated that their client is a national brand and they have not approved the smaller prototype for this particular site.

Chair Marback opened the public hearing, seeing no one, he closed the public hearing.

Mr. Seifert stated that there were a few buildings in the area that had setbacks closer than fifty (50) feet such as Cash Wise Foods and asked if there were similar situations from the past that had reduced setbacks approved.

Ms. Wollmuth stated that Cash Wise Foods was constructed in 1982 prior to when the ordinance was written. She went on to say that Tommy's Carwash is adjacent to the west of the property and was able to meet the fifty (50) foot setback, however, there are buildings along the corridor that are encroaching into that setback that may have been constructed prior to the setback requirements being added to the ordinance.

Mr. Hoff made a motion to deny the variance as he could not find a hardship.

Ms. Clark seconded the motion.

Chair Marback asked the Board for any discussion.

Mr. Seifert asked the Board if the property size, along with the easements that are set so far in are not a hardship.

Mr. Hoff replied no, because we've asked the question if they can use only one menu board and its not in their plans right now.

Mr. Janssen stated that they are working on a smaller prototype that they have not rolled out yet and it could properly fit on this site upon its approval.

Ms. Clark stated she thought this was the wrong project for this piece of land. She went on to say that the previous building that occupied this area encroached into the fifty (50) foot setback but it has since been demolished.

Chair Marback asked for any further discussion.

MOTION: A motion was made by Mr. Hoff to deny the variance as he could not find a hardship. Ms. Clark seconded the motion with Board members Hoff, Clark, Janssen, Seifert, and Marback voting in favor of the motion, the variance was denied.

STAKEHOLDER SELECTION: SELECTION OF BOARD OF ADJUSTMENT MEMBER TO STAKEHOLDER GROUP FOR REVISIONS TO CODE OF ORDINANCES.

Ms. Wollmuth stated they are working to create a stakeholder group to modify provisions in the zoning ordinances to allow some agritourism uses and to establish additional building sizes for riding stables. She stated since the members of the Board of Adjustment review the zoning code for variances that they will be an asset to the Stakeholder Group.

Chair Marback asked Mr. Janssen if he would consider the position.

Mr. Janssen accepted the position to serve on the stakeholder group.

ELECTION OF OFFICERS:

Chair Marback stated he would like to postpone the election of officers until all Board members were present.

ADJOURNMENT:

There being no further business, Chair Marback declared the meeting of the Board of Adjustment adjourned at 5:23 p.m. to meet again on August 03,2023.

Respectfully Submitted,

Tracy L. Walters
Recording Secretary

APPROVED:

Michael Marback, Chair