



BOARD OF ADJUSTMENT MEETING AGENDA

January 4, 2024

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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TERMS and OATHS OF OFFICE

1. Board re-appointment of Curt Janssen and introduction of new Board Member Al Wangler.
2. Board of Adjustment Terms and Oaths of Office.
3. Election of Officers.

MINUTES

4. Consider approval of the minutes of the October 5, 2023 meeting of the Bismarck Board of Adjustment.

REGULAR AGENDA



- 5. **Appeal of Zoning Determination | Off-Premise Advertising Sign – Lot 1, Block 1, Basin Electric Fourth Addition (2830 North 19th Street).**

Owner / Applicant: Joe Gusaas

Board Action: approve continue table deny

OTHER BUSINESS

- 6. Resolution of Appreciation for Michael Marback
- 7. Bylaws
- 8. City Attorney Jannelle Combs

ADJOURNMENT

- 9. The next regular meeting date is scheduled for **February 1, 2024.**

Enclosures: Meeting Minutes of October 5, 2023



**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 5, 2023**

The Bismarck Board of Adjustment met on October 5, 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, Rick Wohl, Michael Marback and alternate Ken Hoff.

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

MINUTES:

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

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

VARIANCE FROM 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)

Ms. Wollmuth stated the applicants, 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.

Ms. Wollmuth also stated the accessory building is currently under construction and that a building permit indicating the required 40-foot front yard setback was issued on June 1, 2023. She went on to say 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 the property boundary.

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. The Hay Creek Township and the public were notified of this request and we have received one written comment. 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. Wohl asked how the issue was discovered in August.

Ms. Wollmuth stated she believed staff has received a call from an adjacent property owner, however, Mr. Blaskowski may have additional information to offer.

Mr. Blaskowski stated he had received a phone call from a neighbor inquiring if a permit has been issued, and stated he sent an inspector to investigate the location of the building.

Mr. Janssen stated on the permit, it states property lines must be clearly marked for all new construction, additions, accessory buildings and decks. He asked Mr. Blaskowski if the property lines were properly identified and located.

Mr. Blaskowski stated he checked with our inspector and the property lines were not located. The City inspector had a conversation on August 16, 2023, with the builder and had discovered an error was made.

Mr. Marback asked if there were any other questions of staff, hearing none, he invited the property owners to come forward.

Mr. Clark stated the property lines have stakes around them and were located four (4) years ago when he purchased the property. He went on to say he believed the property lines started 40 (forty) feet off the roadway.

Chair Marback asked if there were any questions from the board.

Mr. Janssen asked if the property pins were located or if he assumed that the property pins were forty (40) feet off the roadway.

Mr. Clark stated yes, his assumption was the property lines were forty (40) feet off the roadway, but the accessory building is currently located forty-seven (47) feet off the roadway.

Mr. Janssen asked if the builder verified where the property pins were or if a land survey was conducted to confirm where they were located.

Mr. Clark stated no, however, there are stakes that are on the property that go down the south side of the property.

Mr. Janssen stated the property pins are a piece of rebar with a cap on it and that it is an industry standard. He has personally had to locate the property pins twice on his construction jobs as it was a requirement for the permit to make sure there were not any setback issues.

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

Ms. Clark stated she had photos of their property available and she shared them with the Board. She also went on to say that their front yard has a slope on it and stated their property has topographical and storm water issues. Ms. Clark stated that because of the topographical issues, it makes sense to place the accessory building where it is currently located.

Mr. Seifert asked if the builder was present at the meeting, and why the builder did not catch that the property setbacks were not correct.

Mr. Clark stated the builder was not present at the meeting.

Mr. Seifert asked Mr. Blaskowski when the inspector first went out to the property, were there any forms up for the pavement.

Mr. Blaskowski stated he believed the forms were up for the pavement at the time of the inspection and that the inspector used a copy of a lot survey with the location of the accessory building and setbacks placed on it.

Chair Marback stated that the public hearing is now closed and asked for a motion for discussion from the board.

Mr. Seifert stated that he saw two mistakes made, the City and the builder have both had made mistakes and he hated to see the homeowner have to tear down the building.

Ms. Clark stated had the mistake not been made, there would have been other options for the location of the accessory building. The Board of Adjustment is limited in their decision making by not taking financial hardship into account for a project that has already been started.

Mr. Janssen stated that there is a process to follow for safety reasons and after being in construction for 37 years, he has always had to correctly locate the property pins before starting

on a project. He went on to say that the Board of Adjustment cannot use financial hardship as part of the criteria to determine a variance.

Chair Marback asked for any other discussion, seeing none, he closed the public hearing.

MOTION: A motion was made by Mr. Janssen to deny the variance. Ms. Clark seconded the motion with Board members, Janssen, Clark, Wohl and Marback in favor of the motion. Board member Seifert opposed the motion. The motion to deny the variance has been approved.

ELECTION OF OFFICERS:

Chair Marback asked for nominations for Chairman of the Board of Adjustment Committee.

NOMINATION: Ms. Clark nominated Michael Marback for Chairman of the Board of Adjustment. Mr. Wohl seconded the nomination with Board members Janssen, Seifert, Clark and Wohl in favor. Chair Marback abstained the nomination and he was voted as Chairman of the Board of Adjustment.

Chair Marback asked for nominations for Vice Chairman of the Board of Adjustment.

NOMINATION: Mr. Janssen nominated Jennifer Clark for Vice Chairman of the Board of Adjustment. Mr. Seifert seconded the nomination with Board members Janssen, Seifert, Wohl, and Marback in favor. Jennifer Clark abstained the nomination and she was voted as Vice Chairman of the Board of Adjustment.

ADJOURNMENT:

There being no further business, Chair Marback declared the meeting of the Board of Adjustment adjourned at 5:20 p.m. to meet again on November 2, 2023.

Respectfully Submitted,

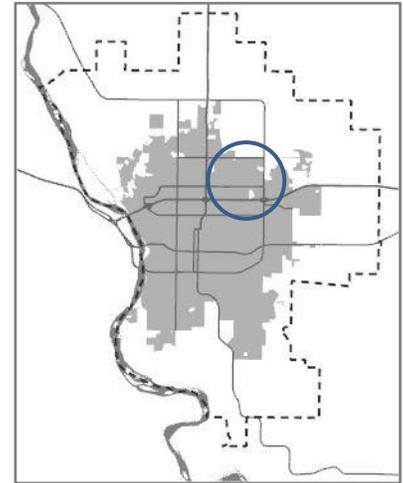
Tracy L. Walters
Recording Secretary

APPROVED:

Chair

Project Summary

<i>Title:</i>	Lot 1, Block 1, Basin Electric 4 th Addition (2830 North 19 th Street)
<i>Status:</i>	Board of Adjustment
<i>Owner(s):</i>	Columbo LLC
<i>Project Contact:</i>	Joe Gusaas, Gusaas Signs
<i>Location:</i>	In northeast Bismarck, in the southwest quadrant of the intersection of East Century Avenue and North 19 th Street



Appeal of Zoning Determination

Joe Gusaas is appealing a zoning determination made on December 12, 2023 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 a proposed off-premise advertising sign located at 2830 North 19th Street (Lot 1, Block 1, Basin Electric Fourth Addition) within the Conditional CG – Commercial zoning district.

Background Information

This property was zoned from the RT – Residential zoning district to the Conditional CA – Commercial in September 2023. An off-premise advertising sign is not permitted within the RT – Residential zoning district.

Prior to rezoning the property and during the rezoning process, Planning staff communicated to the property owner, both in private communications and public documents, that an off-premise advertising sign could not be placed on the property as it would not meet the required spacing distance from the intersection of East Century Avenue and North 19th Street. A copy of the staff report relating to the zoning change is included for your review.

The zoning ordinance requires an off-premise sign to be placed at least 200 feet from the center point of any intersection of an arterial (East Century Avenue) and arterial and/or collector roadway (North 19th Street), which is also the NE ¼ of the NW ¼ of Section 27, T139M-R80W. It should be noted that all spacing distances are measured as the linear distance along the centerline of the roadway. The western boundary of the property is exactly 200 feet from the center point of the intersection, therefore there is no location within the property that would meet this requirement.

A building permit for an off-premise advertising sign on this property was submitted and denied by the Building Inspection Department in October 2023 as the proposed sign did not meet the criteria for approval

outlined in the zoning ordinance. Planning staff explained that the spacing requirement was added to the zoning ordinance in 2016. Planning staff offered to discuss a possible amendment to the ordinance with other City staff, including those from the Bismarck Police Department and the City Engineering Department who helped craft the ordinance requirements in 2016. City staff affirmed that they would not be supportive of any changes to the ordinance that would allow the proposed sign to be placed on the property.

Applicable Sections of the Zoning Ordinance

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

Section 14-03.1 of the City Code of Ordinances (Signs / Off-Premise Advertising Signs – Spacing) states, “Any and all parts of the sign, whether static or digital, shall be located at least three hundred (300) feet from any part of an existing or approved off-premise advertising sign, whether static or digital; at least two hundred (200) feet from the center point of any intersection of arterial and an arterial and/or collector roadway; and at least five hundred (500) feet from the nearest right-of-way of an interstate interchange. In addition, all parts of a digital off-premise advertising sign shall be located at least twelve hundred (1,200) feet from any part of an existing or approved digital off-premise advertising sign. Distance is measured as the linear distance along the centerline of the roadway toward which the sign is oriented. The distance shall be measured between any two signs on the same or opposite sides of this roadway.”

Staff analysis and determination

The Planning Manager / Zoning Administrator has reviewed the zoning ordinance and the proposed request, and has determined that the dimensional requirements outlined in the zoning ordinance would prohibit the installation of an off-premise advertising sign located at 2830 North 19th Street (Lot 1, Block 1, Basin Electric Fourth Addition).

Attachments

1. Appeal of Zoning Determination
2. Zoning Determination

3. Site Exhibit

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

Jenny Wollmuth

From: Joe Gusaas [REDACTED]
Sent: Friday, December 8, 2023 8:18 AM
To: Daniel Nairn
Cc: Jenny Wollmuth; Mark Kern
Subject: Re: Off-Premise Advertising Sign Measurements

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

Daniel,

I would like to appeal the denial of this permit. What are the steps I need to take to do so?

Thanks,
Joe Gusaas
Gusaas Signs

On Dec 6, 2023, at 11:11 AM, Daniel Nairn <dnairn@bismarcknd.gov> wrote:

Joe,

Thanks for following up. I had a full day yesterday, but now have some time to send a more thorough response. We did raise this issue during our plat review meeting on Monday, and the general consensus of the City staff group is that there is no desire to change the sign code to reduce the spacing distance for off-premise advertising signs from intersections.

The spacing distance requirement, including the method of measuring as a linear distance along the centerline of the adjacent roadway, originated from Ordinance 6190 which was adopted in March 2016. Many of the staff in this week's meeting were involved in that process and affirmed that maintaining distances from intersections was the intent.

Based on the images you sent, we did research and confirmed that other cities in our region generally do not have specific spacing distances from intersections and rely on more subjective judgements for interference or sight distance obstruction. Signs have been placed closer to intersections than we allow. This appears to be one provisions in which Bismarck is more restrictive than our peers. That was communicated during the meeting but did not change the outcome.

You have the right to appeal a determination to deny a sign permit. However, as a reminder the grounds for this appeal are whether the provisions of Section 14-03.1-08(14) Off-Premise Advertising Signs are being accurately applied as written. This is not a vehicle for changing the ordinance or varying from it.

Best,

Daniel Nairn, AICP
Planning Manager

City of Bismarck - Community Development Department



December 12, 2023

Joe Gusaas
Gusaas Signs
800 Calypso Dr
Bismarck, ND 58504

RE: Section 14-03.1-05(4) Off-Premise Advertising Signs Zoning Determination

Dear Mr. Gusaas,

The purpose of this letter is to provide you with a zoning determination for the proposed installation of an off-premise advertising sign on the property of 2830 North 19th Street or Lot 1, Block 1, Basin Electric Fourth Addition.

The subject property is located within the Conditional CG – Commercial zoning district. Off-premise advertising signs are an allowable use within this zoning district. However, spacing distances are required by ordinance between any two off-premise advertising signs and between an off-premise advertising sign and a roadway intersection, according to Section 14-03.1-05(4)i. The intersection of East Century Avenue, an arterial roadway, and North 19th Street, a collector roadway, is at the northeast corner of the subject lot. The minimum required distance between the center point of an intersection of a collector and arterial roadway and any part of a sign is 200 feet.

All spacing distances required in this provision are measured “as the linear distance along the centerline of the roadway toward which the sign is oriented.” In this case, the measurement would be taken from the intersection center point, which is also the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 27 T139N-R80W, to the west along East Century Avenue for a distance of 200 feet. The distance to the west lot line is exactly 200 feet, so there is no location on the subject lot that exceeds the minimum spacing distance.

Off-premise advertising signs are only permitted when adjacent to (i.e. oriented toward) an arterial roadway, according to Section 14-03.1-05(4)d. Therefore, it would not be permissible to place the sign adjacent to North 19th Street.

This property was recently rezoned from RT – Residential, within which off-premise advertising signs are not permitted. Ordinance 6557 was approved by the City Commission on August 22,



2023 to effect this change. During the review process for this zoning change, the applicant and property owners were advised on numerous occasions, both in private communications and public documents, that dimensional requirements would disallow the installation of an off-premise advertising sign on the subject lot. For example, the staff report to the June 28, 2023 Planning and Zoning Commission meeting stated the following:

“It should be noted that an off-premise advertising sign (billboard) would not be permitted on either Lot 1 or Lot 2, Basin Electric Fourth Addition, regardless of zoning. There are no locations on this property that would comply with required spacing distance from the intersection of East Century Avenue and North 19th Street. Furthermore, the Highway Beautification Act of 1965, and North Dakota’s agreement to comply, does not recognize commercial rezoning “created primarily to permit outdoor advertising structures” as valid for the purposes of permitting billboards.”

The ordinance provisions in question originated from Ordinance 6190, which was adopted in March 2016.

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

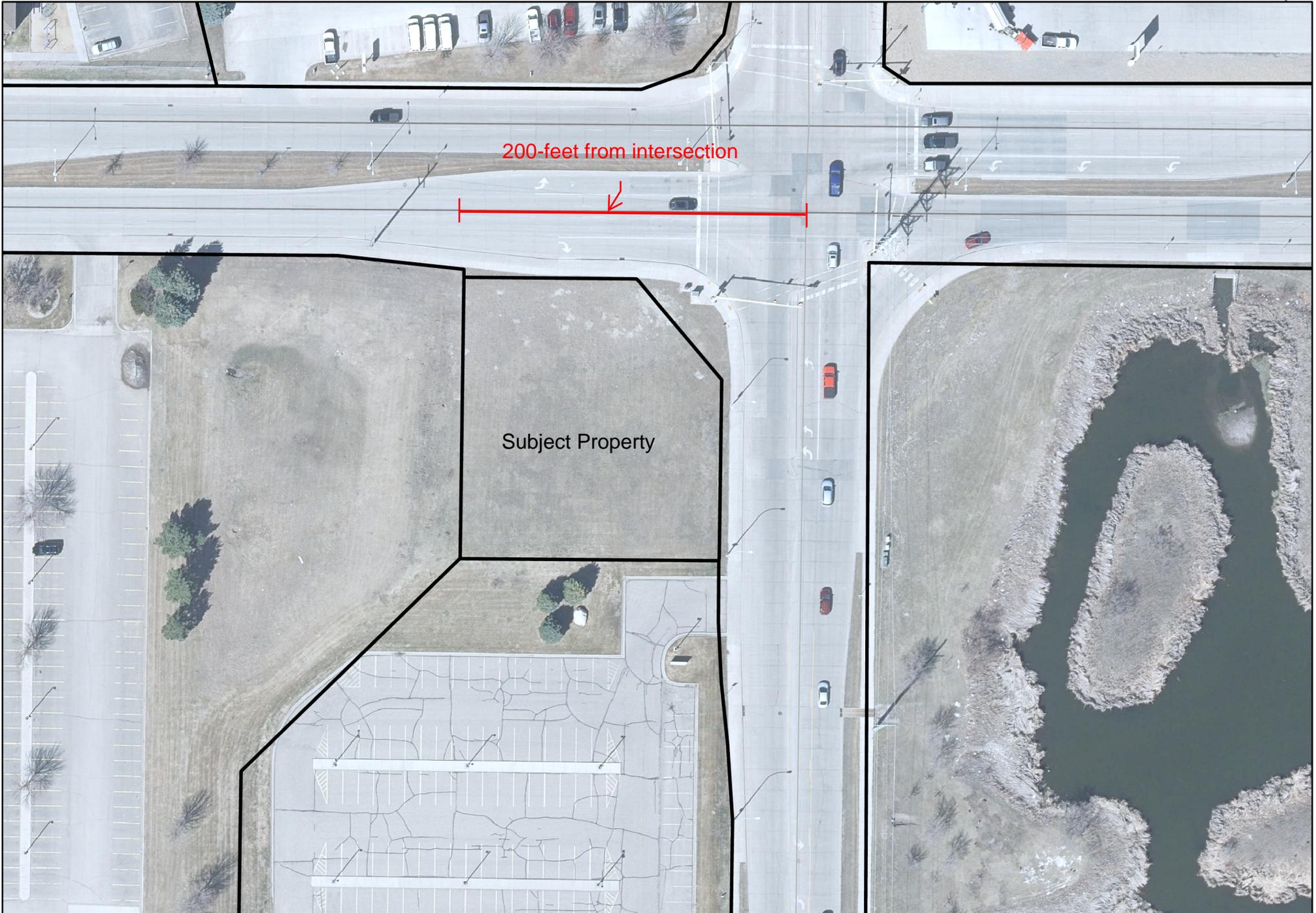
Please let me know if you have any questions or need any additional information.

Sincerely,



Daniel Nairn, AICP
Planning Manager/Zoning Administrator







Resolution of Appreciation

Whereas, Michael Marback has served as a member of the Bismarck Board of Adjustment for the past twenty-four years; and

Whereas, during this time he has represented the interests of both urban and rural residents of the City of Bismarck and Burleigh County; and

Whereas, Mr. Marback has given freely of his time and expertise in the many matters considered by the Commission; and

Whereas, during his term of office on the Board of Adjustment, Mr. Marback has distinguished himself for fair deliberation and common-sense decision making; and

Whereas, Mr. Marback will now leave the Board of Adjustment for a well-deserved rest;

Now, therefore be it resolved by the Bismarck Board of Adjustment that Michael Marback be commended for his dedication and his support for the zoning ordinances that govern the City Bismarck and the Extra Territorial Area and that the appreciation of the Board of Adjustment be extended to him.

Date

Chairman
Bismarck Board of Adjustment

MEMORANDUM

To: Board of Adjustment

From: Jenny Wollmuth, AICP, CFM, Senior Planner

Item(s): Other Business

Member and Alternate Member Appointment

North Dakota Century Code (NDCC) allows a board of adjustment to request that the Bismarck City Commission appoint an alternate member of the board, who shall sit as an active member when and if a member of the board is unable to serve at any hearing.

During your May 6, 2021 Board meeting, the Board of Adjustment voted unanimously to request the City Commission appoint an alternate member. It was determined that a random selection was as equitable as any means to identify the alternate member. Staff used an online randomization tool to select whom out of the six board members would serve as the alternate. Through this process it was identified that Ken Hoff would serve as the alternate member.

The Bismarck City Commission, at their meeting of June 22, 2021, reappointed Jennifer Clark and Ken Hoff to serve on the Board of Adjustment and that Ken Hoff serve as the alternate member. Their terms will expire in June 2024.

Board Bylaws and Procedural Updates

The Board of Adjustment bylaws and Section 14-06-01 of the City Code of Ordinances (Board of Adjustment / Members) will need to be revised to reflect the North Dakota Century Code requirement of 5 board members and 1 alternate. A copy of the bylaws and Section 14-06-01 are attached for your review. If acceptable, staff will prepare a zoning ordinance text amendment at for consideration at the next Planning and Zoning Commission meeting.

Planning staff will initiate a zoning ordinance text amendment to modify the number of Board members to match the NDCC requirements. Procedural updates such as dates of

quorum calls and future selection of members and alternate members will also be reviewed.

Zoning Ordinance Text Amendments

Keeping of Chickens. The City Commission, at their meeting of June 8, 2021, voted 4 to 1 to deny the request for a public hearing on the zoning ordinance text amendment to revise existing requirements related to keeping chickens within rural residential lots outside of City limits and regulations to allow chickens within the City.

FP – Floodplain (Accessory Structures). The Planning and Zoning Commission, at their meeting of June 23, 2021, approved the zoning ordinance text amendment that would to revise the construction and elevation requirements for accessory structures located within the Special Flood Hazard Area (SFHA) or 100-year floodplain.

The proposed changes would allow for accessory structures less than 600 square feet in area to be constructed below the Base Flood Elevation (BFE), according to floodproofing techniques approved by FEMA. Proposed changes would also allow accessory structures greater than 600 square feet in area to be constructed one foot above the BFE.

Accessory structures are buildings located on the same property as a principal building or house, and the use is incidental to the use of the principal building. These structures are used for parking or storage, represent a minimal investment by owners, and have a low damage potential during a flooding event.

The proposed zoning ordinance text amendment forwarded to the City Commission for their consideration at their July 13th meeting.

Appeal Update

The City Commission, at their meeting of June 8, 2021, upheld the May 6th denial of a variance from Section 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard) to reduce the required side yard setback, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building Lot 23, Block 2, Copper Ridge Subdivision.

Attachments:

1. Section 14-06-01 (Board of Adjustment / Members)
2. Board of Adjustment Bylaws

CHAPTER 14-06 - BOARD OF ADJUSTMENT

14-06-01. Members. The board of adjustment heretofore created by ordinance shall continue in full force and effect. The board of adjustment shall consist of six (6) members, each to be appointed by the board of city commissioners for a term of three (3) years. The board of adjustment shall have all of the powers and duties imposed upon it by the statutes of the State of North Dakota and the ordinances of the City of Bismarck.

(Ord. 5667, 05-27-08)

14-06-02. Powers and Duties. The board of adjustment is an administrative board whose powers and duties are limited generally by the laws of the State of North Dakota, particularly by the powers and duties set forth in this section. The board of adjustment shall not have the power to amend this article on zoning, nor to permit nor prohibit any actions which accomplish an amendment of this article on zoning, nor to permit any action nor fail to prohibit any action which would violate this article. However, it is declared the intent of this section that any actions taken by the board of adjustment in full compliance with the provisions of this section shall be deemed to be administrative actions, and shall not be interpreted as unauthorized amendments of the article. The board of adjustment shall have the following powers and duties:

1. Interpretation. On appeal from an order, requirement, determination or provision made by the Zoning Administrator or other administrative official, or by request from any official, agency or head of the city, the board of adjustment shall decide any question involving the interpretation of any provision of this article. The board of adjustment may, in conformity with this article, reverse, affirm, or modify wholly or in part, or render a decision upon any such appeal or request.

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the 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 article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

a. 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.

b. 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 variances 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.

c. 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.

d. 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.

3. Conditional Variance. In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of the article or preserve the neighborhood or general welfare from injury.

4. Renewal of Certificate of Occupancy for Nonconforming Use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of Section 14-03-09 of this article. In granting such renewal, the board of adjustment shall determine that the temporary continuation will not be injurious to the neighborhood, nor to the public

welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension, if such extension were refused. The board of adjustment may refuse to grant an extension of the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than fifteen (15) days prior to the expiration of the original certificate of occupancy.

5. Renewal of Automatically Revoked Building Permit: Upon appeal by any person holding a building permit automatically revoked by the provisions of Section 14-03-04 of this article, the board of adjustment shall hear and determine whether or not such revoked building permit will be renewed. The board of adjustment shall authorize such renewal only where it specifically finds:

a. Construction of the building has, in fact, been started;

b. Substantial expenditures have been made for such construction; and

c. The plans for building and actual construction of the building are in full compliance with the zoning ordinance in effect at the date of issuance of the building permit, and in full compliance with the building code and any other ordinance of the City of Bismarck.

6. Off-street Parking. The board of adjustment shall, upon application, hear and decide any question relating to the decrease of required off-street parking or off-street loading spaces as set forth in Section 14-03-10 of this article.

7. Airport Zoning. The board of adjustment shall have all powers and duties granted to it by the Bismarck Municipal Airport zoning regulation ordinance.

8. Recommendations to City Planning and Zoning Commission. The board of adjustment is authorized to recommend to the city planning and zoning commission for study or action any changes or amendments to the text or district zoning maps that said board finds desirable. The city planning and zoning commission shall consider

such recommendation and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.

9. Miscellaneous Powers and Duties. The board of adjustment shall have such other powers and duties as may be authorized by this article, or any amendment thereto.

10. Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of North Dakota, this article, or any other ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this article.

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 consists 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.

Adopted this date day of Month Year

Board of Adjustment


Chairman