

BOARD OF ZONING ADJUSTMENT
July 8, 2010

The Board of Zoning Adjustment Meeting was held on Thursday July 8, 2010 in the City Hall 3rd Floor Courtroom, Aberdeen, South Dakota with Rich Kezar presiding as Acting Chairman. Acting Chairman Kezar called the meeting to order. Members present at roll call were Kezar, Weigel, Musel, and VanDeRostyne. Absent were Sikkink and Babcock. Also present were Ken Hubbard, City Planner, Brett Bill, Planning & Zoning Director, Barry Dunlavy, Building Inspector, Chad Nilson, Building Inspector, Stuart Nelson, Assistant City Engineer, Mike Olson, Code Enforcement Officer, and Paula Nelson, Board of Zoning Adjustment Secretary.

VanDeRostyne moved and Musel seconded to approve the Board of Zoning Adjustment minutes of June 10, 2010, all members voting aye, the motion carried.

Acting Chairman Kezar began with new business as follows:

- 1) Jodi Myburgh requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in a (R3/R4) High Density Residential/Special Density Residential Zoning District, all on Lot 11, Block 5, Thomas Addition, a.k.a. 515 Tenth Avenue SE. Jodi Myburgh was present to represent the property. Following discussion Weigel moved and VanDeRostyne seconded to approve with the following stipulations: 1) Any provided yard/play area must be maintained as a fenced in area prior to the operation of this daycare commencing, 2) All applicable state regulations must be met, 3) No more than one individual other than the owner, may work at the daycare at one time, 4) Pending notification that the applicant and members of the household have not been rejected by the state due to abuse or neglect, 5) A floor plan must be submitted for review showing the location used for childcare, 6) Age range of children, the number of children and hours of operation must be submitted, 7) This special exception is for the owner, as long as she/he is the owner/operator of the proposed use, 8) Announced and unannounced inspections must be permitted by operator, 9) The operator must schedule a home inspection with the Building Inspection Department and/or the Fire Marshal in order to verify that Building and Fire Code requirements are met, and any required changes or modifications must be made, and 10) Owner/operator and any employees must be licensed with the City of Aberdeen. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

- 2) Jarrett O. Jones requested permission, as per site plan submitted, to permit the open storage, parking or sale of vehicles, machinery and trailers, building materials and supplies, which would be a Special Exception in a (C-2) Highway Commercial Zoning District, all on Lot 1, Block 1, Jones Commercial Park Subdivision, SE¼ Sect. 16-T123N-R63W, a.k.a. 515 Jones Street S. There being no representative present this item was moved to the end of the agenda.

- 3) Jarrett O. Jones requested permission, as per site plan submitted, to 1) construct an addition to residence 30' from the East property line rather than the required 100', which would be a 70' Building Variance, and 71' from the South property line rather than the required 100', which would be a 29' Building Variance, and 2) to replace a 14'x20' carport addition 48' from the South property line rather than the required 100', which would be a 52' Building Variance and 3) to permit an operation and maintenance terminal for trucks and other equipment, which would be a Special Exception in a (M-Ag) Mini-agricultural Zoning District, all on Lots 1&2, Shishnia First Addition, SE¼ Sect. 14-T123N-R63W, a.k.a. 13295 & 13297 393rd Avenue. There being no representative present this item was moved to the end of the agenda.
- 4) Julie Brownell requests permission, as per site plan submitted, to construct a 28'x35' detached garage 10' from the South property line rather than the required 25', which would be a 15' Building Variance, all on Lot 8, Block 13, Simmons First Addition, a.k.a. 1429 Second Street S. There being no representative present this item was moved to the end of the agenda.
- 5) Gary Reis requested permission, as per site plan submitted, for existing residence to remain 57' from the West property line rather than the required 100', which would be a 43' Building Variance, in order to construct an addition that will meet all required setbacks, all on Lot 2, First Replat of Schelhaas First Addition, NW¼ Sect. 31-T123N-R62W, a.k.a. 13506 394th Avenue. Lori Reis was present to represent the property. Following discussion Musel moved and VanDeRostyne seconded to approve, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 6) Lee Klitzke requested permission, as per site plan submitted, to 1) replace a front deck on a residence located in a (C-2) Highway Commercial Zoning District, which would be a Special Exception, and 2) for existing residence to remain 15' and deck to remain 11' from the East property line rather than the required 45', which would be a 30' and 34' Building Variance, in order to replace existing front deck, all on Lot 5, Block 48, Bennett & Thomas Addition, a.k.a. 507 Third Street N. Elmer Zahn of EZ Builders was present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to approve with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, 3) All required inspections must be completed, 4) Property owner must obtain an easement from the neighbor to the North for that portion of residence that encroaches onto property, and 5) Previously applied stipulation to plat properties together must be completed. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION AND BUILDING VARIANCE APPROVED.**
- 7) Ron & Emily Hettich requested permission, as per site plan submitted, for existing residence to remain 23.5' from the East property line rather than the required 25', which would be a 1.5' Building Variance in order to construct a deck, all on Lots 788-789,

Morning Heights Extended Addition, a.k.a. 914 Lawson Street S. There being no representative present this item was moved to the end of the agenda.

- 8) John Hieb requested permission, as per site plan submitted, to 1) construct a mini-storage building, which would be a Special Exception in a (C-2) Highway Commercial Zoning District, and 2) to construct a mini-storage 50' in depth rather than the permitted, 30', which would be a 20' Maximum Depth Variance and 3) 150' in length rather than the permitted 120', which would be a 30' Maximum Width Variance, all on Lot 15, Auditor's Second Subdivision, SE¼ Sect. 27-T123N-R64W, a.k.a. 2900 Highway 281 S. There being no representative present this item was moved to the end of the agenda.
- 9) Patrick Russell requested permission, as per site plan submitted, for existing uncovered deck to remain 1.5' from the South property line rather than the required 5', which would be a 3.5' Building Variance in order to construct a new uncovered deck 4' from the South property line rather than the required 5', which would be a 1' Building Variance, all on The East 99.58' of Lot 2, Block 5, Subdivision of North Plains First Addition & North ½ Vacated 16th Avenue, a.k.a. 1605 Jackson Street N. Patrick Russell was present to represent the property. Following discussion VanDeRostyne moved and Weigel seconded to approve agenda item #1, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.** Following further discussion Weigel moved and VanDeRostyne seconded to deny agenda item #2, all members voting nay, the motion failed. Following further discussion VanDeRostyne moved and Musel seconded to approve agenda item #2 with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, and 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**
- 10) Chad Weber requested permission, as per site plan submitted, to 1) construct a 10'x12' shed 5' from the North property line rather than the required 10', which would be a 5' Building Variance, and 2) 5' from the West property line rather than the required 10', which would be a 5' Building Variance, and 3) permission for existing residence to remain 25' from the East property line rather than the required 35', which would be a 10' Building Variance, all on The East 10' of Lot 15 and all of Lot 17, Block 11, Ninth Addition to Highland North Subdivision, a.k.a. 1603 State Street N. Chad Weber was present to represent the property. Following discussion Weigel moved and VanDeRostyne seconded to approve agenda item #3, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.** Following further discussion VanDeRostyne moved and Musel seconded to approve agenda items #1 and #2 with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, and 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**

- 11) Terry Hettich requested permission, as per site plan submitted, to operate a mineral extraction operation in a (R-2) Medium Density Residential Zoning District, which would be an Appeal to the Board of Zoning Adjustment, all on The SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the East 990' of the South 660' NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sect. 22-T123N-R64W, a.k.a. the unplatted property in the SW corner of the intersection of Highway 281 and Highway 12. Randy Hettich was present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to approve with the following stipulations: 1) All required permits (including state permits) must be obtained, 2) Property should be rezoned to (A-1) Agricultural District, 3) A timeline should be set for extraction to cease and reclamation to be completed, 4) Landscape buffers (trees) should be installed to limit visibility and to limit dust, noise, etc. to the total satisfaction of City Forester with 100% buffer along both highways, and 5) Property must be maintained in a neat/orderly manner. Upon roll call all members voting nay, the motion failed. **APPEAL DENIED.**
- 12) Jacob W. Bosmoe requested permission, as per site plan submitted, for an existing residence to remain 2' from the North property line rather than the required 5', which would be a 3' Building Variance and 17' from the West property line rather than the required 25', which would be an 8' Building Variance in order to replace foundation wall, all on Lots 13 & 14, Block 20, Hagerty & Lloyd Addition, a.k.a. 502 Jay Street N. Jacob W. Bosmoe was present to represent the property. Following discussion Musel moved and VanDeRostyne seconded to approve with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, and 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**
- 13) Culver's Restaurant and Mark Rich requested permission, as per site plan submitted, to install a 3'x11'10" electronic message center on existing freestanding sign, which would be an Appeal to the Board of Zoning Adjustment, on Lot 3, First Replat of Lamont's First Replat of Lamont's First Addition, a.k.a. 616 Centennial Street S. Mark Rich was present to represent the property. Following discussion VanDeRostyne moved and Weigel seconded to deny, all members voting aye, the motion carried. **APPEAL DENIED.**
- 14) Justin D. Shultis requested permission, as per site plan submitted, to construct new residence 1) 20' from the East property line rather than the required 25', which would be a 5' Building Variance and 2) to construct an uncovered deck 11' from the East property line rather than the required 15', which would be a 4' Building Variance, all on Lot 3, Kelley's Replat of Block 15, Hagerty & Lloyd Addition, a.k.a. 517 Dakota Street N. Justin D. Shultis was present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to approve with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, 3) All required inspections must be completed, and 4) As per the recommendation of the Building Inspection and Code Enforcement Departments, the foundation must be completed within 6 months and

the house must be completely finished within one year. All deadlines will start with today's date. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**

- 15) Rolling Hills Golf Development requested permission, as per site plan submitted, to 1) plat 24 lots with frontages of 27.83', 19.52', 19.52', 27.83', 27.83', 19.52', 19.52', 27.83', 27.83', 19.52', 19.52', 27.83', 44.45', 40.90', 20.14', 25.14', 21.7', 21.08', 21.08', 21.39', 19.93', 45.49', 45.85', 45.04' of frontage rather than the required 60', which would be a 32.17', 40.48', 40.48', 32.17', 32.17', 40.48', 40.48', 32.17', 32.17', 40.48', 40.48', 32.17', 15.55', 19.1', 39.86', 34.86', 38.3', 38.92', 38.92', 38.61', 40.07', 14.51', 14.15', and 14.96' Minimum Lot Width Variances, in order to 2) construct twin homes 0' from the lot line rather than the required 8', which would be thirty 8' Building Variances and 3) request permission to construct 2 twin homes 13.96' from the South property line rather than the required 20', which would be two 6.04' Building Variances, all on Lots 40B, 40A, 39B, 39A, 38B, 38A, 2B, 2A, 1B, 1A, 35B and 35A, Rolling Hills Village Tenth Addition, a.k.a. 1604, 1610, 1616, 1622, 1628, 1702, 1708, 1714, 1713, 1707, 1701 and 1627 Nicklaus Drive. Bryon Itterman was present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to approve agenda items #1 and #2 with the following stipulations: 1) Plat must be approved by Planning Commission and City Council and filed with Register of Deeds, 2) Plans must be submitted for review and a permit must be obtained prior to work commencing, 3) Property pins must be located for inspection and setbacks must be verified, and 4) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **MINIMUM LOT WIDTH VARIANCE AND BUILDING VARIANCES APPROVED.** Following discussion VanDeRostyne moved and Musel seconded to deny agenda item #3. Upon roll call, Musel - nay, VanDeRostyne, Weigel, Kezar - aye (1-nay,3-aye), the motion carried. **BUILDING VARIANCES DENIED.**
- 2) Jarrett O. Jones requested permission, as per site plan submitted, to permit the open storage, parking or sale of vehicles, machinery and trailers, building materials and supplies, which would be a Special Exception in a (C-2) Highway Commercial Zoning District, all on Lot 1, Block 1, Jones Commercial Park Subdivision, SE¼ Sect. 16-T123N-R63W, a.k.a. 515 Jones Street S. Jarrett O. Jones was present to represent the property. Following discussion Weigel moved and VanDeRostyne seconded to deny, all members voting nay, the motion failed. Following further discussion Musel moved and VanDeRostyne seconded to approve with the following stipulations: 1) Permits must be obtained for existing signs and any signs in violation of sign ordinance shall be removed, 2) Permits must be obtained for all structures built without permits in place and they must be inspected if necessary, 3) Property must be maintained in a neat and orderly manner at all times, 4) All vehicles must be licensed and operable as per state law definition, 5) Storage of items blocking access to the city's lift station will not be permitted. Any violation of this stipulation will result in the removal of vehicles at the owner's expense, 6) Future violations would cause this item to be readdressed by this board, and 7) Trees/landscaping must be

installed per the City Forester. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

- 3) Jarrett O. Jones requested permission, as per site plan submitted, to 1) construct an addition to residence 30' from the East property line rather than the required 100', which would be a 70' Building Variance, and 71' from the South property line rather than the required 100', which would be a 29' Building Variance, and 2) to replace a 14'x20' carport addition 48' from the South property line rather than the required 100', which would be a 52' Building Variance and 3) to permit an operation and maintenance terminal for trucks and other equipment, which would be a Special Exception in a (M-Ag) Mini-agricultural Zoning District, all on Lots 1&2, Shishnia First Addition, SE¼ Sect. 14-T123N-R63W, a.k.a. 13295 & 13297 393rd Avenue. Jarrett O. Jones was present to represent the property. Following discussion VanDeRostyne moved and Weigel seconded to approve agenda items #2 and #3 with the following stipulations: 1) Permits must be obtained with a penalty applied for construction completed without permits in place, and 2) Property must be maintained in a neat and orderly manner at all times. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE AND SPECIAL EXCEPTION APPROVED.** Following further discussion Musel moved and VanDeRostyne seconded to approve agenda item #1 with the following stipulations: 1) Permits must be obtained with a penalty applied for construction completed without permits in place, and 2) Property must be maintained in a neat and orderly manner at all times. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 4) Julie Brownell requests permission, as per site plan submitted, to construct a 28'x35' detached garage 10' from the South property line rather than the required 25', which would be a 15' Building Variance, all on Lot 8, Block 13, Simmons First Addition, a.k.a. 1429 Second Street S. This item was withdrawn by the petitioner. No action taken.
- 7) Ron & Emily Hettich requested permission, as per site plan submitted, for existing residence to remain 23.5' from the East property line rather than the required 25', which would be a 1.5' Building Variance in order to construct a deck, all on Lots 788-789, Morning Heights Extended Addition, a.k.a. 914 Lawson Street S. Ron Hettich was present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to approve with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, and 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 8) John Hieb requested permission, as per site plan submitted, to 1) construct a mini-storage building, which would be a Special Exception in a (C-2) Highway Commercial Zoning District, and 2) to construct a mini-storage 50' in depth rather than the permitted, 30', which would be a 20' Maximum Depth Variance and 3) 150' in length rather than the permitted 120', which would be a 30' Maximum Width Variance, all on Lot 15, Auditor's

Second Subdivision, SE¼ Sect. 27-T123N-R64W, a.k.a. 2900 Highway 281 S. John Hieb and Attorney Jay Gellhaus were present to represent the property. Following discussion VanDeRostyne moved and Musel seconded to deny. Upon roll call, Weigel, Musel, Kezar - nay, VanDeRostyne - aye (3-nay,1-aye), the motion failed. Following further discussion Musel moved and Weigel seconded to approve with the following stipulations: 1) Property shall be sufficiently screened from view of Highway 281. Landscape materials and trees must be added to provide screening on the South and East sides of this property, 2) The property shall be kept in a neat and orderly manner at all times regarding mowing, debris, garbage, etc., 3) No outside storage shall be permitted without a Special Exception from the Board of Zoning Adjustment, and 4) All required permits and inspections must be obtained. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION, MAXIMUM DEPTH VARIANCE, AND MAXIMUM WIDTH VARIANCE APPROVED.**

Acting Chairman Kezar continued with other business as follows:

- 1) Ken Hubbart stated that Election of Officers will be continued until next month. No action taken.

Following further discussion VanDeRostyne moved for adjournment, seconded by Weigel, all members voting aye, the meeting was adjourned until August 12, 2010.

Paula Nelson
Board of Zoning Adjustment Secretary
July 8, 2010