

BOARD OF ZONING ADJUSTMENT
October 8, 2009

The Board of Zoning Adjustment Meeting was held on Thursday October 8, 2009 in the City Hall 3rd Floor Courtroom, Aberdeen, South Dakota with Dan Zumbaum presiding as Acting Chairman. Acting Chairman Zumbaum called the meeting to order. Members present at roll call were Zumbaum, VanDeRostyne, Musel, Kezar, and Sikkink. Also present were Ken Hubbard, City Planner, Chad Nilson, Building Inspector, Mike Olson, Code Enforcement Officer, Vern Meyer, Planning Technician, Barry Dunlavy, Building Inspector, and Paula Nelson, Board of Zoning Adjustment Secretary.

Kezar moved and Sikkink seconded to approve the Board of Zoning Adjustment minutes of September 10, 2009, all members voting aye, the motion carried.

Chairman Babcock began with new business as follows:

- 1) Joel Aberle requested permission, as per site plan submitted, to enclose stairway 3.5' from the South property line rather than the required 8', which would be a 4.5' Building Variance, all on Lot 1, Randall's First Subdivision, a.k.a. 1512 Herret Street S. Joel Aberle was present to represent the property. Following discussion VanDeRostyne moved and Kezar 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.**
- 2) Rory & Kathleen Harr requested permission, as per site plan submitted, for 1) existing residence to remain 20' from the South property line rather than the required 25', which would be a 5' Building Variance in order to 2) construct a front deck 13' from the front property line rather than the required 15', which would be a 2' Building Variance, all on Lot 15, Block 43, Hagerty & Lloyd Addition, a.k.a. 823 First Avenue NE. Rory Haar was present to represent the property. Following discussion Sikkink 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 VARIANCE APPROVED.**
- 3) Andrew Jones requested permission, as per site plan submitted, for existing residence to remain 9.25' from the East property line rather than the required 10', which would be a .75' Building Variance and 6.25' from the West property line rather than the required 10', which would be a 3.75' Building Variance in order to replace foundation, all on Lot 23, Block 9, Eleventh Addition to Highland North Subdivision, a.k.a. 515 Eighteenth Avenue NE. Neal Jones was present to represent the property. Following discussion Musel moved and Kezar 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.**

- 4) Eddie Falcon requested permission, as per site plan submitted, to replace front porch, which would be a Special Exception for a residence located in a (C3/R4) Central Business District/Special Density Residential Zoning District, all on Lot 1, Washburn's Replat of Block 106, Hagerty & Lloyd Addition, a.k.a. 502 Jay Street S. Eddie Falcon 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) Approval must be obtained from the State Historical Preservation Office prior to obtaining a building permit. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**

- 5) Ron Fischer and Erna Breidenbach requested permission, as per site plan submitted, to construct a 10'x10' shed 9'7" East of the nearest mobile home rather than the required 20', which would be a 10'5" Building Variance, all on BOLS #32, Northview Mobile Manor Outlots F&G, Northview Sixth Addition, a.k.a. 1201 Eighth Avenue NE #32. Erna Breidenbach was present to represent the property. Following discussion Kezar moved and Sikkink seconded to deny, all members voting aye, the motion carried. **BUILDING VARIANCE DENIED.**

- 6) Health Care Plus Federal Credit Union requested permission, as per site plan submitted, to 1) construct a 3 sided free standing sign structure in addition to an existing free standing sign, which would be an Appeal to the Board of Zoning Adjustment to allow 4 free standing signs (ordinance designates this as 3 separate signs), and 2) request permission to install 3 electronic message centers on proposed 3 sided sign, which would be an Appeal to the Board of Zoning Adjustment, all on Lot 1, Health Care Plus First Addition, a.k.a. 203 Dakota Street S. Justin Feickert and Chris Woolverton of Creative Signs were present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to deny agenda item #1. Upon roll call, Sikkink, Musel, VanDeRostyne, Zumbaum - aye, Kezar - nay (4-aye,1-nay), the motion carried. Following further discussion Musel moved and Zumbaum seconded to approve a second freestanding (flat 2-sided) sign with the following stipulations: 1) Permit must be obtained prior to erection of sign and, 2) Sign may not be located in 35' corner visibility triangle. Upon roll call, Kezar, Musel, VanDeRostyne, Zumbaum - aye, Sikkink - nay (4-aye,1-nay) the motion carried. **APPEAL APPROVED.** Following further discussion VanDeRostyne moved and Zumbaum seconded to deny agenda item #2, all members voting aye, the motion carried. Following further discussion Musel moved and Zumbaum seconded to approve agenda item #2 amended to limit to 1- 2 sided digital sign with the following stipulations: 1) All electronic message board signs shall be in compliance with all other applicable codes regarding signs, 2) This sign shall not interfere with traffic safety, and may not be confused with or construed as a traffic control device, 3) Each message displayed shall remain static for a minimum of 6 seconds, with all change sequences to be instantaneous, no fading, dissolving, spinning in/out, etc., 4) Electronic message board signs shall not contain animated images or graphics, audio components, scrolling, blinking, flashing, pulsating, or fluttering images or the appearance or illusion of writing, printing, or other movement, 5) Electronic message board signs shall not be operated to display a message or graphic that is entirely red or blue in color. Monochrome electronic message board signs shall be limited to utilizing only amber colored lights, 6) Violation of the previous stipulations may result in a citation with a penalty of \$500 for each day that the violation persists, and 7) Absolutely no off-premise advertising shall be allowed on this sign along

1st Avenue corridor, as per city ordinance. Upon roll call, Sikkink, Musel, Zumbaum – aye, Kezar, Musel – nay (3-aye,2-nay), the motion carried. **APPEAL APPROVED.**

- 7) JD Shultis requested permission, as per site plan submitted, for existing residence to 1) remain 20' from the East property line rather than the required 25', which would be a 5' Building Variance in order to replace foundation and construct addition to back of residence, 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. JD Shultis was present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve agenda item #1, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.** Following further discussion Musel moved and Zumbaum 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, 3) All required inspections must be completed, and 4) All building & code enforcement issues, notices & orders, etc. on this condemned property must be dealt with immediately. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 8) Kessler Corner, Inc. requested permission, as per site plan submitted, for 1) Unit 1 to remain 4' from West property line rather than the required 45', and 6', 14', 16' from adjacent mobile homes rather than the required 20', which would be a 41', a 14', a 6' and a 16' Building Variance, and 2) for Unit 2 to remain 0' from West property line rather than the required 45', and 16', 11', 13' from adjacent mobile homes rather than the required 20', which would be a 45', a 4', a 9' and a 7' Building Variance, and 3) for Unit 3 to remain 0' from West property line rather than required 45', and 13', 11', 13' from adjacent mobile homes rather than the required 20', which would be a 45', a 7', a 9', and a 7' Building Variance, and 4) for Unit 4 to remain 0' from West property line rather than the required 45', and 13', 10', and 12' from the adjacent mobile homes rather than required 20', which would be a 45', a 7', a 10', and a 8' Building Variance, and 5) for Unit 5 to remain 0' from West property line rather than the required 45', and 12', 10', 8' and 9' from adjacent mobile homes rather than required 20', which would be a 45', a 8', a 10', a 12' and a 11' Building Variance, all on The South 284' of the North ½ of Outlot A, Dayton's Outlot 1, Block 1, Highland Park Addition, a.k.a. 612 Twelfth Street S. Tom Kessler was present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve with the following stipulations: 1) The owner of Unit 1 must obtain a building permit for deck with penalty applied for construction without a permit, 2) These variances are to bring the current mobile homes into compliance only, any additions, repairs, replacement, etc. will be required to meet all applicable Zoning & Building Codes, 3) Owner must apply for and receive easements from the City Council for each mobile home currently in Public R.O.W., and the easements will be good for the current trailer only, any changes will void the easement, and 4) Park Manager will be required to ensure that future projects, new mobile homes, etc. are properly permitted with this office prior to construction. Upon roll call, all members voting, the motion carried. **BUILDING VARIANCES APPROVED.**
- 9) Kessler Corner, Inc. requested permission, as per site plan submitted, for 1) Unit 6 to remain 0' from West property line rather than the required 45', and 9', 16', and 5' from adjacent mobile homes rather than the required 20', which would be a 45', a 11', a 4' and a 15' Building

Variance, and 2) for Unit 7 to remain 0' from South property line rather than the required 45', and 16', and 8' from adjacent mobile homes rather than the required 20', which would be a 45', a 4', and a 12' Building Variance, and 3) for Unit 8 to remain 10' and 14' from adjacent mobile homes rather than the required 20', which would be a 10' and 6' Building Variance, and 4) for Unit 9 to remain 14', 8', and 13' from the adjacent mobile homes rather than required 20', which would be a 6', 12', and a 7' Building Variance, and 5) for Unit 10 to remain 0' from South property line rather than the required 45', and 8' and 8' from adjacent mobile homes rather than required 20', which would be a 45', a 12', and a 12' Building Variance and 6) for Unit 11 to remain 6' from the South property line rather than the required 45', 1' from East property line rather than the required 45', and 8' from the mobile home to the West rather than the required 20', which would be a 39', a 44', and a 12' Building Variance, all on The South 284' of the North ½ of Outlot A, Dayton's Outlot 1, Block 1, Highland Park Addition, a.k.a. 612 Twelfth Street S. Tom Kessler was present to represent the property. Following discussion Kezar moved and VanDeRostyne seconded to approve with the following stipulations: 1) These variances are to bring the current mobile homes into compliance only, any additions, repairs, replacement, etc. will be required to meet all applicable Zoning & Building Codes, 2) Owner must apply for and receive easements from the City Council for each mobile home currently in Public R.O.W., and the easements will be good for the current trailer only, any changes will void the easement, and 3) Park Manager will be required to ensure that future projects, new mobile homes, etc. are properly permitted with this office prior to construction. Upon roll call, all members voting, the motion carried. **BUILDING VARIANCES APPROVED.**

- 10) Kessler Corner, Inc. requested permission, as per site plan submitted, for 1) Unit 12 to remain 0' from East property line rather than the required 45', and 13' from West mobile home rather than the required 20', which would be a 45', and a 7' Building Variance, and 2) for Unit 13 to remain 2' from East property line rather than the required 45', and 14' from adjacent mobile home rather than the required 20', which would be a 45', and a 6' Building Variance, and 3) for Unit 14 to remain 0' from the East property line rather than the required 45', and 7' and 14' from adjacent mobile homes rather than the required 20', which would be a 45', a 13', and a 6' Building Variance, and 4) for Unit 15 to remain 9' from the East property line rather than the required 45', and 0' from North property line rather than the required 25', and 16' and 7' from the adjacent mobile homes rather than required 20', which would be a 36', a 25', a 4' and a 13' Building Variance, and 5) for Unit 16 to remain 2' from North property line rather than the required 25', and 16' and 14' from adjacent mobile homes rather than required 20', which would be a 23', a 4', and a 6' Building Variance and 6) for Unit 17 to remain 5' from the North property line rather than the required 25', and 14' and 11' from adjacent mobile homes rather than the required 20', which would be a 20', a 6' and a 9' Building Variance, all on The South 284' of the North ½ of Outlot A, Dayton's Outlot 1, Block 1, Highland Park Addition, a.k.a. 612 Twelfth Street S. Tom Kessler was present to represent the property. Following discussion Musel moved and VanDeRostyne seconded to approve with the following stipulations: 1) These variances are to bring the current mobile homes into compliance only, any additions, repairs, replacement, etc. will be required to meet all applicable Zoning & Building Codes, 2) Owner must apply for and receive easements from the City Council for each mobile home currently in Public R.O.W., and the easements will be good for the current trailer only, any changes will void the easement, and 3) Park Manager will be required to ensure that future projects, new mobile

homes, etc. are properly permitted with this office prior to construction. Upon roll call, all members voting, the motion carried. **BUILDING VARIANCES APPROVED.**

Acting Chairman Zumbaum continued with other business as follows:

- 1) Ken Hubbart informed the Zoning Board members that the date of the pending lawsuit filed against the City of Aberdeen by Dustin Usselman & Tarah Usselman has been scheduled for November 10, 2009.

Following further discussion VanDeRostyne moved for adjournment, seconded by Kezar, all members voting aye, the meeting was adjourned until November 12, 2009.

Paula Nelson
Board of Zoning Adjustment Secretary
October 8, 2009