

**BOARD OF ZONING ADJUSTMENT**  
**November 12, 2009**

The Board of Zoning Adjustment Meeting was held on Thursday November 12, 2009 in the City Hall 3<sup>rd</sup> Floor Courtroom, Aberdeen, South Dakota with Bob Babcock presiding as Chairman. Chairman Babcock called the meeting to order. Members present at roll call were Kezar, Zumbaum, Babcock, Sikking, and VanDeRostyne. Also present were Ken Hubbart, City Planner, Chad Nilson, Building Inspector, Rob Baumgartner, Code Enforcement Officer, and Paula Nelson, Board of Zoning Adjustment Secretary.

Kezar moved and Zumbaum seconded to approve the Board of Zoning Adjustment minutes of October 8, 2009, all members voting aye, the motion carried.

Chairman Babcock began with new business as follows:

- 1) Shanna Zantow requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-3) High Density Residential Zoning District, all on Lots 323-324 & the North ½ of Lot 325, Morning Heights Addition, a.k.a. 620 Merton Street S. Shanna Zantow was present to represent the property. Following discussion Zumbaum 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 May 15, 2010, 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) Vicki Anderson requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-1) Low Density Residential Zoning District, all on Lots 19-21, Block 22, Corrected Plat of Highlands, a.k.a. 1416 Lincoln Street N. Vicki Anderson was present to represent the property. Following discussion Kezar 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.**

- 3) Tammora Johnson requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-3) High Density Residential Zoning District, all on Lot 3, Foster's Second Subdivision of Lots 17-18, Block 42 & 47, Thomas Addition, a.k.a. 17 Tenth Avenue SW. Tammora Johnson was present to represent the property. Following discussion Zumbaum moved and Sikkink 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.**
  
- 4) Tara Hunstad requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-2) Medium Density Residential Zoning District, all on Lot 1, Block 1, Kyburz & Hurlbert Addition, a.k.a. 1403 Dakota Street S. Warren Hunstad was present to represent the property. Following discussion Zumbaum 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 May 15, 2010, 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.**

- 5) Sixth Avenue Plaza Management requested permission, as per site plan submitted, to permit the installation of 678sf of signage rather than the permitted 609sf, which would be a 69sf Maximum Sign Variance, all on Lots 4-12 & the East 52' of Lots 15-17, Shannon's Replat of Lot 25, Pierson's Subdivision, E. Park & Vacated Alley except H-1, a.k.a. 1923 Sixth Avenue SE. Chris Woolverton, Brady Byram, and Patrick King were present to represent the property. Following discussion Zumbaum moved and Kezar seconded to approve with the stipulation that sign permits be issued prior to erection of signs. Upon roll call, all members voting aye, the motion carried. **MAXIMUM SIGN VARIANCE APPROVED.**
- 6) Charles B. Kornmann requested permission, as per site plan submitted, to 1) construct twin home 0' from the North property line rather than the required 8', which would be a 8' Building Variance and 2) to plat a lot 88' deep rather than the required 100', which would be a 12' Minimum Lot Depth Variance and 3) 59' wide rather than the required 60', which would be a 1' Minimum Lot Width Variance, all on Proposed Lot 2, Kornmann Subdivision of Lot 2, Kornmann-Ivey First Subdivision, a.k.a. 1018 Fifth Street N. Francis Brink of Brink Engineering was present to represent the property. Following discussion Zumbaum moved and VanDeRostyne seconded to approve agenda item #1 with the stipulation that the common wall between units must have 2 hour fire rating from slab to roof deck with minimum 5/8" sheetrock under roof sheathing 4' each side of rated wall. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.** Following further discussion Zumbaum moved and Kezar seconded to approve agenda items #2 and #3, all members voting aye, the motion carried. **MINIMUM LOT DEPTH VARIANCE AND MINIMUM LOT WIDTH VARIANCE APPROVED.**
- 7) Charles B. Kornmann requested permission, as per site plan submitted, to 1) construct twin home 0' from the South property line rather than the required 8', which would be a 8' Building Variance and 2) to plat a lot 78' deep rather than the required 100', which would be a 22' Minimum Lot Depth Variance, all on Proposed Lot 1, Kornmann Subdivision of Lot 2, Kornmann-Ivey First Subdivision, a.k.a. 1022 Fifth Street N. Francis Brink of Brink Engineering was present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve with the stipulation that the common wall between units must have 2 hour fire rating from slab to roof deck with minimum 5/8" sheetrock under roof sheathing 4' each side of rated wall. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED & MINIMUM LOT DEPTH VARIANCE AND MINIMUM LOT WIDTH VARIANCE APPROVED.**
- 8) South Dakota Wheat Growers requested permission, as per site plan submitted, to provide 155 10'x20' parking stalls rather than the required 168 stalls, which would be a 13 Minimum Parking Stall Variance, all on Lot 3, Lamont Seventh Addition, NE¼ 20-123-63, a.k.a. 908 Lamont Street S. Jon Schmitz and Jerry Clausen of Puetz Corporation were present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve, all members voting aye, the motion carried. **MINIMUM PARKING STALL VARIANCE APPROVED.**
- 9) Christina Rice requested permission, as per site plan submitted, for 1) existing residence to remain 18.5' from the East property line rather than the required 25', which would be a 6.5' Building Variance and 4.6' from the North property line rather than the required 15', which

would be a 10.4' Building Variance in order to 2) construct a deck and wheelchair lift 8.5' from the East property line rather than the required 15', which would be a 6.5' Building Variance, all on Lot 24 & the North ½ of Lot 25, Garden Addition, a.k.a. 802 Eighth Street S. This item was moved to the end of the agenda.

- 10) Morgan Brockel requested permission, as per site plan submitted, for existing residence to remain 22' from the West property line rather than the required 25', which would be a 3' Building Variance in order to replace foundation and construct addition to residence, all on Lot 5, Block 24, First Addition to Highlands Subdivision, a.k.a. 906 Penn Street N. Morgan Brockel was present to represent the property. Following discussion VanDeRostyne moved and Zumbaum 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.**
- 11) Old Apostolic Lutheran Church requested permission, as per site plan submitted, for 1) existing church to remain 5.5' from the North property line rather than the required 25', which would be a 19.5' Building Variance and 14' from West property line rather than the required 15', which would be a 1' Building Variance in order to replace existing wheel chair ramp 8.5' from the West property line rather than the required 10', which would be a 1.5' Building Variance, all on The West 70' of the North 12.75' of Lot 18 & the West 70' of Lots 19-24, Dawson & Lowes Replat of Block 21, West Hill Addition, a.k.a. 1223 Fourth Avenue SW. There being no representative, this item was moved to the end of the agenda.
- 12) Dakota Storage, Inc. 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 3, Fuhrman's Second Addition, a.k.a. 1602 Twelfth Avenue NE. Kurt Weisbeck was present to represent the property. Following discussion VanDeRostyne moved and Babcock seconded to approve with the stipulation that an 8' tall opaque fence or landscaping buffer, approved by the City Forester, must be installed around this open storage area. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**
- 13) E&T Freedom Properties, LLC requested permission, as per site plan submitted, for existing residence to remain 1' from the North property line rather than the required 5', which would be a 4' Building Variance in order to replace the steps on the South side of residence, all on Lot 8, Nelson-Rohrbachs Replat of Lot C, Lawson Outlot of Lot 8, Bonaccord Heights 19-123-63, a.k.a. 1021 High Street S. Allen Ochsner of Dakota Construction 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.**

- 14) Dan Burdette requested permission, as per site plan submitted, for 1) existing detached garage to remain 5' from the West property line rather than the required 10', which would be a 5' Building Variance, in order to 2) construct an addition to garage 5' from the West property line rather than the required 10', which would be a 5' Building Variance, all on Lots 1-5, Block 20 of the Corrected Plat of the Highlands Addition to Aberdeen, a.k.a. 1323 Lincoln Street N. Following discussion VanDeRostyne moved and Kezar seconded to approve agenda item #1. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.** Following further discussion VanDeRostyne moved and Babcock 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 VARIANCE APPROVED.**
- 15) Mardian Scrap Recycling, Jensen's Rock & Sand, and Loeb's Investments requested permission, as per site plan submitted, to plat a lot in a (I-2) Unrestricted Industrial Zoning District with 20' of frontage rather than the required 150', which would be a 130' Minimum Lot Frontage Variance and 86.62' of frontage rather than the required 150', which would be a 63.38' Minimum Lot Frontage Variance, all on Proposed Lot 4, Industrial Addition to the City of Aberdeen, a.k.a. the railroad spur adjacent to Jensen's Rock & Sand. There being no representative, this item was moved to the end of the agenda.
- 16) Steven Huettl requested permission, as per site plan submitted, for 1) existing residence to remain 65' from the East property line rather than the required 100', which would be a 35' Building Variance in order to 2) replace an attached garage 65' from the East property line rather than the required 100', which would be a 35' Building Variance, all on Lot 1, except the North 105' thereof, Block 1, Moulton's First Subdivision, a.k.a. 13655 387<sup>th</sup> Avenue. Steven Huettl was present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve with the following stipulations: 1) Permit must be obtained prior to work commencing and 2) An application to rezone to (M-AG) Mini-Agricultural District must be approved. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**
- 17) Bethesda Home of Aberdeen requested permission, as per site plan submitted, to permit 1) 73sf of freestanding signage rather than the required 16sf, which would be a 57sf Maximum Size Variance and 2) to permit 4 existing freestanding signs to remain rather than the required 1 freestanding sign, which would be a 3 Freestanding Sign Variance in order to 3) construct a fifth freestanding sign, which would be a 4 Freestanding Sign Variance and to permit 10sf of new freestanding signage, which would be a 67sf Maximum Size Variance, all on Clark's Second Addition of Mel-Ros Estates, a.k.a. 1224 High Street S. Chris Woolverton, Brady Byram, and Patrick King of QQP Creative Signs were present to represent the property. Following discussion Zumbaum moved and Kezar seconded to approve agenda items #1 and #2 with the stipulation that sign permits must be obtained prior to face changes on existing signs. Upon roll call, all members voting aye, the motion carried. **MAXIMUM SIZE VARIANCE AND FREESTANDING SIGN VARIANCE APPROVED.** Following further discussion Zumbaum moved and VanDeRostyne seconded to approve agenda item #3 with the stipulation that a sign

permit must be obtained prior to erection of new sign. Upon roll call, all members voting aye, the motion carried. **MAXIMUM SIZE VARIANCE APPROVED.**

- 18) Dale Aman requested permission, as per site plan submitted, for existing residence to remain 6' from the North property line rather than the required 15', which would be a 9' Building Variance and 10" from the West property line rather than the required 20', which would be a 19'2" Building Variance and 2.5' from the East property line rather than the required 25', which would be a 22.5' Building Variance in order to replace foundation, all on Lot 1, Block 19, Coe & Howard Addition, a.k.a. 702 Jackson Street S. Dale Aman 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 VARIANCES APPROVED.**
- 19) North Plains Estates II, Inc. requested permission, as per site plan submitted, to reduce the required setbacks to construct a new residence to 12' from the East property line rather than the required 20', which would be an 8' Building Variance, all on Proposed Lot 1, Mehlhoff's Fifteenth Addition to North Plains Subdivision, a.k.a. 1602 Werth Court. Lonnie Anderson was present to represent the property. Following discussion Zumbaum moved to approve that the North and East setbacks are switched but motion died due to lack of a second. Following further discussion Sikkink moved and Kezar seconded to approve. Upon roll call, Sikkink, Kezar, Zumbaum - aye, VanDeRostyne, Babcock - nay (3-aye,2-nay), the motion carried. **BUILDING VARIANCE APPROVED.**
- 11) Old Apostolic Lutheran Church requested permission, as per site plan submitted, for 1) existing church to remain 5.5' from the North property line rather than the required 25', which would be a 19.5' Building Variance and 14' from West property line rather than the required 15', which would be a 1' Building Variance in order to replace existing wheel chair ramp 8.5' from the West property line rather than the required 10', which would be a 1.5' Building Variance, all on The West 70' of the North 12.75' of Lot 18 & the West 70' of Lots 19-24, Dawson & Lowes Replat of Block 21, West Hill Addition, a.k.a. 1223 Fourth Avenue SW. Neil Bellikka was present to represent the property. Following discussion Kezar 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.**
- 15) Mardian Scrap Recycling, Jensen's Rock & Sand, and Loeb's Investments requested permission, as per site plan submitted, to plat a lot in a (I-2) Unrestricted Industrial Zoning District with 20' of frontage rather than the required 150', which would be a 130' Minimum Lot Frontage Variance and 86.62' of frontage rather than the required 150', which would be a 63.38' Minimum Lot Frontage Variance, all on Proposed Lot 4, Industrial Addition to the City of Aberdeen, a.k.a. the railroad spur adjacent to Jensen's Rock & Sand. Wayne Mardian was present to represent the property. Following discussion Kezar moved and Babcock seconded to

approve, all members voting aye, the motion carried. **MINIMUM LOT FRONTAGE VARIANCE APPROVED.**

- 9) Christina Rice requested permission, as per site plan submitted, for 1) existing residence to remain 18.5' from the East property line rather than the required 25', which would be a 6.5' Building Variance and 4.6' from the North property line rather than the required 15', which would be a 10.4' Building Variance in order to 2) construct a deck and wheelchair lift 8.5' from the East property line rather than the required 15', which would be a 6.5' Building Variance, all on Lot 24 & the North ½ of Lot 25, Garden Addition, a.k.a. 802 Eighth Street S. Chad Nilson 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. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**

Chairman Babcock continued with other business as follows:

- 1) Ken Hubbart introduced Robert Baumgartner, Code Enforcement Officer.
- 2) VanDeRostyne questioned the previous Zoning Board action(s) for the beef plant property. Ken Hubbart stated that he would provide a copy of the approved Order at the next months' meeting.
- 3) Kezar asked for an update on Usselman's pending lawsuit. Ken Hubbart informed the Zoning Board members that Judge Portra ruled there was no new information to hold a hearing and will present a written decision at a later date.

Following further discussion Sikkink moved for adjournment, seconded by Kezar, all members voting aye, the meeting was adjourned until December 10, 2009.

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Paula Nelson  
Board of Zoning Adjustment Secretary  
November 12, 2009