

BOARD OF ZONING ADJUSTMENT
March 13, 2008

The Board of Zoning Adjustment Meeting was held on Thursday, March 13, 2008 in the City Hall 3rd Floor Courtroom, Aberdeen, South Dakota with Bob Babcock presiding as Chairman. Chairman Babcock called the meeting to order. Members present at roll call were Schlenker, Sikkink, VanDeRostyne, Zumbaum, and Babcock. Absent was Rosebrock. Also present were Brett Bill, Planning and Zoning Director, Ken Hubbard, City Planner, Mike Olson, Code Enforcement Officer, Mike Holsten, Code Enforcement Officer, Vern Meyer, Planning Technician, Dwayne Schueller, GIS/Planning Technician, Chad Nilson, Building Inspector, and Paula Nelson, Board of Zoning Adjustment Secretary.

Zumbaum moved and VanDeRostyne seconded to approve the Board of Zoning Adjustment minutes of February 14, 2008, all members voting aye, the motion carried.

Chairman Babcock began with new business as follows:

- 1) Mark Gutjahr requested permission, as per site plan submitted, for existing residence to remain 16.5' from West property line rather than the required 25', which would be a 8.5' Building Variance, in order to repair foundation due to flood damage, all on Lots 312 & 313, Morning Heights Addition, a.k.a. 801 Lawson Street S. Mark Gutjahr was present to represent the property. Following discussion VanDeRostyne moved and Sikkink 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 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 2) James & Kelly Marnette requested permission, as per site plan submitted, for 1) existing residence to remain 2' from West property line rather than the required 5', which would be a 3' Building Variance and 2) existing residence to remain 21.5' from North property line rather than the required 25', which would be a 3.5' Building Variance in order to construct a deck on back of residence, all on Lot 3, Block 52, Second Addition, a.k.a. 114 Eighth Avenue SE. James Marnette and Paul Marnette were present to represent the property. Following discussion Zumbaum 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 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCE APPROVED.**
- 3) Kenneth Zens 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 Special Exception in a C-2 (Highway Commercial Zoning District), on Lots 21-24, Block 17, East Park Addition & ½ Vacated Alley (Pierson's Subdivision), a.k.a. 1802 Third Avenue SE. Kenneth Zens was present to represent the property. Following discussion Sikkink moved and VanDeRostyne seconded to approve with the following stipulations: 1) No parking or storage of any merchandise, equipment, parts, etc. in the 35' corner visibility triangle (intersection of 3rd Avenue SE and Wilson Street), 2) All vehicles

on lot must be licensed, operable and available for sale, 3) All junk, unlicensed/inoperable vehicles and machinery, waste materials, and miscellaneous items must be removed or stored in buildings within 30 days of today's date (April 13, 2008), 4) No items may be stored in public right-of-way's (property line must be verified on West side of property), and 5) Property must be maintained in a neat and orderly manner at all times. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

- 4) Harr Motors requested permission, as per site plan submitted, to 1) install three freestanding signs rather than the permitted 1 free standing sign, which would be a 2 Freestanding Sign Variance, and 2) to install 822sf of freestanding signage rather than the required 300sf, which would be a 522sf Freestanding Sign Variance, all on Lot 3, McIntyre's Subdivision in the SW¼ Sec. 16-T123N-R63W, a.k.a. 4255 Sixth Avenue SE. Rod Tobin, Attorney and James & Barbara Harr were present to represent the property. Zumbaum moved and Sikkink seconded to approve this item as requested. Following discussion VanDeRostyne moved and Schlenker seconded to table the motion in order to discuss whether this Board should even be hearing this item again, all members voting aye, the motion to table the previous motion carried. Adam Altman, City Attorney was present and stated that he had received several questions about the propriety of this Board hearing this item again and explained what conflict of interest rules govern members of this Board. Mr. Altman also explained that the Board needed to consider whether the application before them today is substantial enough to be considered a different application, or whether reconsideration of the matter is barred by the doctrine of *res judicata*. Following discussion Zumbaum moved and Sikkink seconded to put the original motion back on the table, all members voting aye, the motion to reinstate the earlier motion carried. Upon roll call for the original motion to approve, all members voting aye (to approve the signs as requested), the motion carried. **FREESTANDING SIGN VARIANCES APPROVED.**
- 5) Harr Motors 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 Special Exception in a C-2 (Highway Commercial Zoning District), on Lot 3, McIntyre's Subdivision in the SW¼ Sec. 16-T123N-R63W, a.k.a. 4255 Sixth Avenue SE. Rod Tobin, Attorney, and James & Barbara Harr were present to represent the property. Following discussion Zumbaum moved and Sikkink seconded to approve with the following stipulations: 1) Open storage is limited to the display of licensed and operable vehicles and customer/employee parking - no off premise storage of junk, unlicensed or inoperable vehicles, etc., 2) Property must be maintained in a neat and orderly manner, 3) No temporary or non-permitted signs, banners, etc. to be attached to or displayed amongst vehicles, and 4) Parking lot and display area must be landscaped to meet the city requirements that were in place at the time the building permit was issued. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**
- 6) Harr Motors 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 Special Exception in a C-2 (Highway Commercial Zoning District), on Sign Outlot and Lot 1, Highland Park First Subdivision, a.k.a. 1611 & 1701 Sixth Avenue SW. Rod Tobin, Attorney, and James & Barbara Harr were present to represent the property. Following discussion Zumbaum moved and Schlenker seconded to approve with the

following stipulations: 1) No junk vehicles, unlicensed or inoperable vehicles, supplies, materials, etc. to be stored on lot, 2) Property must be maintained in a neat and orderly manner, 3) No signage (temporary or permanent), 4) Storage should be in compliance with the request of the Assistant Public Works Director (there is a watermain laying behind the curb and all vehicles should be no closer than 20' from the back of the curb to allow the city access to the valves on this line), and 5) This approval is for 2 months from today's date (May 8, 2008). Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

- 7) William Mundhenke & Jensen Rock & Sand, Inc. requested permission, as per site plan submitted, to permit the open storage, parking, or sale of vehicles, raw materials; building materials; supplies; wholesaling, warehousing; manufactured goods; contractor's equipment; and concrete, asphalt and ready-mix manufacturing operations, and sales, which would be a Special Exception in an I-2 (Unrestricted Industrial Zoning District), all on Outlot 2A and Outlot 2C, Subdivision of Reese Outlot 2-3, E $\frac{1}{2}$ NE $\frac{1}{4}$ Sect. 23-T123N-R64W, a.k.a. 603 Ninth Avenue SW. Jay Gellhaus, Attorney and Cathy McGarry of Jensen Rock & Sand were present to represent the property. Following discussion VanDeRostyne moved and Sikkink seconded to approve with the following stipulations: 1) Property must be landscaped according to City Landscape Ordinance, 2) Property must be maintained in a neat and orderly manner, 3) All vehicles, machinery, parts, junk, etc. that is currently on this property must be removed prior to any Jensen Rock and Sand operations commencing on this property, within 15 days from date of closing on property, with Clark Title, Jay Gellhaus, or Jensen Rock & Sand to notify the Planning and Zoning Department of the date of closing, and 4) This special exception is contingent upon the sale of this property to Jensen Rock & Sand, and will be valid as long as Jensen Rock & Sand is owner/operator of proposed use. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

Chairman Babcock continued with other business as follows:

- 1) Discussion ensued regarding Electronic Message Board Signs. Following discussion Zumbaum moved and Babcock seconded to rescind the moratorium on sign permits for all digital signs. Upon roll call, all members voting aye, the motion carried. **DIGITAL SIGN MORATORIUM RESCINDED.** Following further discussion Zumbaum moved and VanDeRostyne seconded to withdraw the proposed ordinance amendment for digital signs. Upon roll call, all members voting aye, the motion carried. **DIGITAL SIGN PROPOSED ORDINANCE AMENDMENT WITHDRAWN.**

Following further discussion Zumbaum moved for adjournment, seconded by VanDeRostyne, all members voting aye, the meeting was adjourned until April 10, 2008.

Paula Nelson
Board of Zoning Adjustment Secretary
March 13, 2008