



CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031
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Phone (507) 238-9461

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To: Board of Zoning Appeals

From: Peter Bode, Planner & Zoning Official

Subject: Agenda – Regular Meeting
Tuesday, November 12, 2024
City Council Chambers, City Hall, 100 Downtown Plaza

- 1) Approval of Agenda
- 2) Approval of Minutes – October 1, 2024

New Business

- 3) Public Hearing – Variance Request – 112 N State St

Unfinished Business

None

- 4) Adjournment

MINUTES OF THE FAIRMONT BOARD OF ZONING APPEALS

Regular Meeting

October 1, 2024

City Council Chambers, City Hall, 100 Downtown Plaza

Members present: Jon Davis, Mike Klujeske, Susan Krueger, Mike Jacobson, Adam Smith, Council Liaison Wayne Hasek

Members absent: *None*

Staff present: Planner & Zoning Official Peter Bode

Chair Smith called the meeting to order at 4:30 p.m.

Approval of Agenda: Motion by Klujeske and second by Krueger to approve the agenda as presented. Motion carried.

Approval of Minutes – September 3, 2024: Motion by Klujeske and second by Krueger to approve the September 3, 2024 meeting minutes as presented. Motion carried.

Public Hearing – Variance Request – 1215 N Main St: Chair Smith opened the public hearing. Bode introduced a request by Jason Pahl at 1215 North Main Street to allow a 3-foot instead of 5-foot southern side yard setback requirement, a 14-foot instead of 30-foot top-of-bluff setback requirement, and a 28% instead of 25% impervious surface requirement in order to build a garage overhang. Bode stated that staff's findings support approval of the setback variances and denial of the impervious surface variance.

Jason Pahl, applicant, spoke in favor of the request.

There were no further public comments. Motion by Krueger and second by Klujeske to close the public hearing. Motion carried.

Members discussed the request.

Motion by Krueger and second by Klujeske to approve the setback variance requests with BZA Resolution 2024-9 with additional conditions as listed in the resolution. On roll call: Davis yes, Klujeske yes, Krueger yes, Jacobson yes, Smith yes. Motion carried.

Motion by Klujeske and second by Smith to deny the impervious surface variance request with BZA Resolution 2024-10. On roll call: Davis yes, Klujeske yes, Krueger yes, Jacobson yes, Smith yes. Motion carried.

Adjournment: There were no further agenda items. Motion by Klujeske and second by Davis to adjourn. Motion carried and the meeting adjourned at 4:55 p.m.

Respectfully submitted,
Peter Bode



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MEMORANDUM

TO: Board of Zoning Appeals
FROM: Peter Bode, Planner & Zoning Official
DATE: November 12, 2024
RE: 112 N State St – Variance Request

Background

Scott and Monica Burtis, owners of Burtis Chiropractic and property owners at 112 North State Street, request two variances to allow a sunshade attached to the building to extend close to the public right-of-way to the west and over the southern interior property line onto neighboring property. Being one of the original commercial corridors in Fairmont, North State Street development is commonly close to property lines, far closer than our contemporary 30-foot standard which is more consistently in force along newer corridors.

The applicants have entered into an easement agreement with their neighbor to allow the sunshade over the property line. Staff and the city attorney have collaborated to determine whether a private easement between the neighboring property owners would be sufficient to allow a sunshade over the property line by the City with a variance. The city attorney has confirmed that the private easement included by the applicant does allow the City to grant the variance over the property line.

While the application made by the property owners list several issues related to the development, the Board of Zoning Appeals, and the City broadly, must focus on the variance criteria set out in state statute and our guidance document. Staff address these standards below.

Variance Standards

1. Is the variance in harmony with the purposes and intent of code?

Staff find the request is in harmony with the purposes and intent of code. The setbacks exist to protect buildings on both properties from fire hazards and provide a common, agreeable distance between neighboring buildings. Given the easement agreement provides 15 feet of fire protection encompassing the sunshade and has been signed by both property owners, staff conclude the request is harmonious to the intent of code. This is also true for the western property line, as buildings along the corridor are commonly very close to the sidewalk.

2. Is the variance consistent with the Comprehensive Plan?

Staff find the request is consistent with the Comprehensive Plan. The plan guides development in this neighborhood to be commercial, which the proposal is consistent with.



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3. Does the proposal put property to use in a reasonable manner?

Staff find the request is reasonable. Sunshades are common for commercial buildings of this type and the existing building is very close to property lines. Additionally, common agreement between the two property owners indicates the request is reasonable for the neighborhood.

4. Are there unique circumstances to the property not created by the landowner?

Staff find that unique circumstances exist. The existing office building was built on a considerably narrow lot, meaning subsequent property owners would have a difficult time complying with code even for reasonable requests such as the one presented by the applicants.

5. Will the variance, if granted, retain the essential character of the locality?

Staff find the request will retain the essential character of the locality. The commercial building and its sunshade fit the form and character of the corridor, and in staff's view will improve aesthetic conditions in the area while not affecting the safety of passing vehicles, pedestrians, or neighbors.

6. Are there other considerations for the variance request besides economics?

While the applicants state economic reasons for the request, it is the opinion of staff that they also demonstrate significant valid practical difficulty relating to the existing building's location.

Recommendation

Staff recommend the variance request be granted with three below conditions by roll call incorporating staff's findings into BZA Resolution 2024-11:

1. That the applicant maintain the validity of the private easement allowing the sunshade over the neighboring property and that if there is any legal vacation of the easement by any party the sunshade must be immediately removed.
2. That the applicant apply for and receive an approved building permit for the sunshade before construction begins.
3. That the applicant contact City staff for a Planning & Zoning Department inspection upon completion of the construction or by May 12, 2025, whichever is sooner, to determine compliance with this resolution and related requirements. This inspection may occur at the same time as a Building & Safety Department final inspection.

*Respectfully submitted,
Peter Bode, Planner & Zoning Official*

Attachments: BZA Resolution 2024-11
Application



PLANNING APPLICATION

NOTE TO APPLICANT: All fields below must be completed with fee paid. See list of submission requirements for each type of application at the back of this packet. All items required to be submitted must be received for your application to be reviewed.

Name of Applicant: Dr Scott P Burtis Phone No: 507 235 5551

Email Address: sburtis@burtischiropractic.com

Mailing Address: 112 N state St Fairmont MN 56031

Street Address of Proposal: 112 N state St Parcel ID: 232600050

Description of Application: variance for sunshade installation

Check One	Type of Application	Fee	Submission Requirements
	Administrative Appeal	\$ 50.00	1. All fields on this form completed with signatures for every involved property owner (may use extra paper for more signatures). 2. Fee payment made to City of Fairmont. 3. All documents listed for your type of application at the back of this packet.
	Code Amendment	\$150.00	
	Conditional Use Permit	\$250.00	
	Home Occupation Permit	\$150.00	
	Major Subdivision (Preliminary Plat)	\$300.00	
	Minor Subdivision	\$ 90.00	
	Planned Unit Development	\$250.00	
	Rezoning	\$300.00	
	Variance Request (Residential)	\$150.00	
<input checked="" type="checkbox"/>	Variance Request (Commercial)	\$250.00	

I HEREBY CERTIFY THAT THE INFORMATION AND EXHIBITS HERewith SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Owner's Name (Printed) Dr Scott P Burtis Owner's Signature [Signature]

Applicant's Name (Printed) Dr Scott P Burtis Applicant's Signature [Signature]

CITY STAFF USE ONLY	
Check No: <u>22700</u> <u>22712</u>	Date Paid: <u>9-16-24</u>
Date Received as Final and Complete:	_____
60-Day Rule Deadline:	_____
Date of Final Decision:	_____

Specific variance Request

We are unsure how to approach this section of the application. We have been advised by city staff that we need separate setback variances on both the west side and the south side for this sunshade installation to be approved.

City code indicates awnings (there is no verbiage that would apply to a sunshade which is a different item in that there is very little effect of snow weight and/or wind effect) do not need variances and/or setbacks:

West Sunshade: This is covered and allowed for under the city code. On p. 27 of Fairmont's city code, it states "1. Commercial structures may have awnings or canopies that extend up to the property line." It goes onto say that "2. Commercial structures may have awnings or canopies that extend onto the public right-of-way with approval from Director of Public Works and the Planner." This would seem to imply that permission from the Director of Public Works or the Planner is only required if it does indeed extend onto the public right-of-way, which it does not. Please note that the prior awning never required a variance under these same guidelines; we are at a loss to understand why it is now required. In addition, please note that this sentence would imply that awnings are not "structures." Otherwise, the verbiage could be restated to say that "commercial structures may have structures..." Also, International Building Codes define awnings as "projections" and not "structures." Minnesota Building Code (upon which Fairmont City Code is based) is based on this IBC code.

We therefore request whatever setback variance may apply in this case. The sunshade extends 23.5 inches out from the building but does not breach the property line.

South portion of southwest sunshade: This has been addressed by the granting of an easement by the property owner to the south. Two different attorneys have been consulted with in regard to this issue. Both are in agreement that as long as the property owner has granted an easement there is no requirement of a variance.

We hope you can appreciate the ambiguity of this situation. There does not appear to be any stated requirement for awnings in city code. Sunshades are not even addressed. According to legal counsel easements eliminate the need for variances which involve private property. As such we request whatever variance and or approval this needs. We

request guidance from the city of Fairmont as to whatever variances and/or setbacks may be needed under these peculiar circumstances.

Respectfully submitted,

Dr. Scott & Monica Burtis

Please note that the installation of these sunshades was never a plan of ours, nor was it just an upgrade for personal preference. Our building was struck by a car in 2019, and this required extensive repairs. Part of those repairs included new siding around the whole building as we could not find matching siding any longer. This led us to replace the previous awning (which never required a variance) with sunshades. Had we known the difficulty we would have in replacing the prior awning we would have made the contractor just side around it. As it is we purchased the sunshades, paid \$4,000 for engineering and inspection, another \$1,800 for special epoxy as required by the city building inspector, and have had to go through this long process of getting the sunshade installation approved. Additionally, we have had to consult with an attorney to guide us through this process as the lack of clarity in the city code has led to different interpretations by various parties.

As such we are not asking for a particular variance or setback, only confirmation that we can attach the sunshades without any issue being generated by the city staff.

Sincerely,

Dr. Scott & Monica Burtis
Burtis Chiropractic Center

Variance Criteria Guidance – City of Fairmont

The underlined questions below represent the required statutory criteria, pursuant to Minn. Stat. § 462.357, subd. 6, which must be considered and answered affirmatively in order for the Board of Zoning Appeals or the City Council, as applicable, to grant a variance application. For purposes of establishing a record, a majority of the members of the governing body must agree upon the answers given to each question below. The following guidance is intended to assist the governing body in developing its written findings on each of the below underlined statutory criteria:

1) Is the variance in harmony with the purposes and intent of the ordinance?

Some of the more common purposes and intent of zoning ordinances, which may be considered in evaluating this criterion include, but are not limited to, the following:

- a. To promote the public health, safety, morals, comfort and general welfare;
- b. To conserve and protect property and property values;
- c. To secure the most appropriate use of land; or
- d. To facilitate adequate and economical provisions for public improvements.

The variance requested will really only address part b. The addition of the sunshades will compliment the building and complete the original intended design changes. They will be an upgrade to the prior awning which was dated and decreased property values. The allowance of the completion will improve both this property as well as neighboring land values. Because they are only aesthetic in nature they will not apply to parts a, c, d.

2) Is the variance consistent with the Comprehensive Plan?

What is the future land use category for the subject property? **Current and future land use of this property is for a health care facility that has already existed for over 35 years.**

Does the request align with this category and other provisions of the Comprehensive plan?

- a. While we are not located downtown, this variance allows us to complete our remodel which assists in re-vitalizing the State Street Corridor. We feel this is just as vital and appropriate to Fairmont's revitalization as a downtown Plaza upgrade.
- b. This is part of our remodel plan which assists us in "growing existing business".
- c. As a vital part of Fairmont's Medical Community, this variance allows us to continue to put Fairmont's Medical Community on the leading front.
- d. Preserve, protect, and rehabilitate Fairmont's communities – especially the State Street corridor

3) Does the proposal put property to use in a reasonable manner?

Would the request put the property to use in a reasonable way but cannot do so under the rules of the ordinance? It does not mean that the land cannot be put to any reasonable use

whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of this factor is whether the request to place a building there is reasonable. For example, is it reasonable to put a building in the proposed location?

The property use is currently in a reasonable manner and would not affect the manner in which it is being used. Again, it is simply a completion of the original design and would be aesthetical in nature only. Without the variation we cannot complete this project as originally designed.

4) Are there unique circumstances to the property not created by the landowner?

Are there unique physical characteristics of the property not caused by the landowner? The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner (i.e. size of the lot, shape of the lot, layout of the building, topography, trees, wetlands, etc.). For example, when considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees?

Unique physical characteristics – The awning has already been manufactured at significant cost. The application process has been delayed significantly due to communication errors and misunderstandings. Our contractor thought the awning was approved under the original permit. A later review showed it needed a separate building inspection, a separate engineer review, and now a separate variance application as it slightly crosses over a neighboring property. Our practical difficulty is that it was “Approved” originally and is now completed and awaiting installation (for over a year). Redesign and alteration would force us to incur additional delays, significant cost, and adversely affect the aesthetic aspect of this upgrade.

The property is unique in that it was built in 1963 within 1+ inch of the property line to the southwest corner. The awning on the south would cross over the neighboring property owner’s property. We have already obtained an easement which eliminates the necessity of a variance on that side of the property. The property line to the west is over two feet from the edge of the building. The sunshade is 23.5” and would not cross over the property line. The prior awning was the same dimension and did not necessitate a variance. Review of the city code would seem to indicate that due to the fact that it does not affect public right of way that a variance is not needed. This variance is requested in light of current feedback from the city of Fairmont that they still require a variance.

5) Will the variance, if granted, retain the essential character of the locality?

If granted, will the use of the land or the structure be of an appropriate scale, in a suitable location, or otherwise be consistent with the surrounding area? For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

The sunshade will retain and promote essential character of the locality. Very similar sunshades have already been approved on other businesses along the State Street corridor. The addition of the sunshades will actually enhance the aesthetics of the building, which is already better than most in the area.

6) Are there other considerations for the variance request besides economics?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the statutory factors are met.

If there are affirmative answers to questions 3, 4, and 5, the application then satisfies the practical difficulties test, and if the answer is yes to this question, then in that event, the application may proceed if the other criteria (1 and 2) above are also met.

If there are not affirmative answers to questions 3, 4, and 5, then the practical difficulties test is not satisfied, and if the answer to this question is no, then in that event, the application must be denied for failure to meet the practical difficulties test.

Practical Difficulties – The awning has already been manufactured at significant cost. The application process has been delayed significantly due to communication errors and misunderstandings. Our contractor thought the awning was approved under the original permit. A later review showed it needed a separate building inspection, a separate engineer review, and now a separate variance application as it slightly crosses over a neighboring property. Our practical difficulty is that it was “Approved” originally and is now completed and awaiting installation (for over a year). Redesign and alteration would force us to incur additional delays, significant cost, and adversely affect the aesthetic aspect of this upgrade.

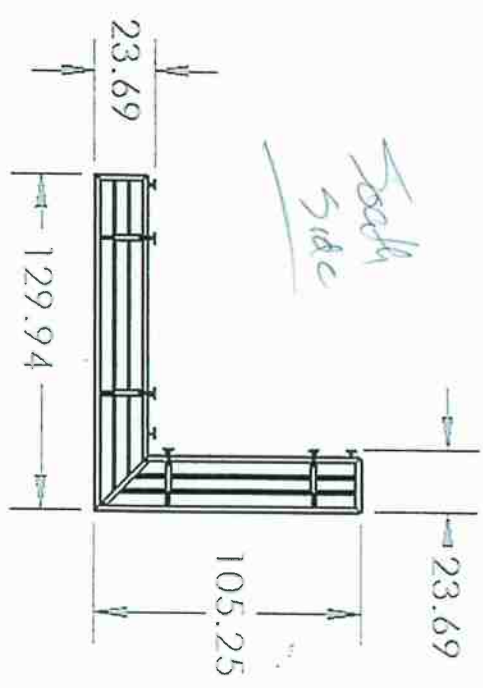
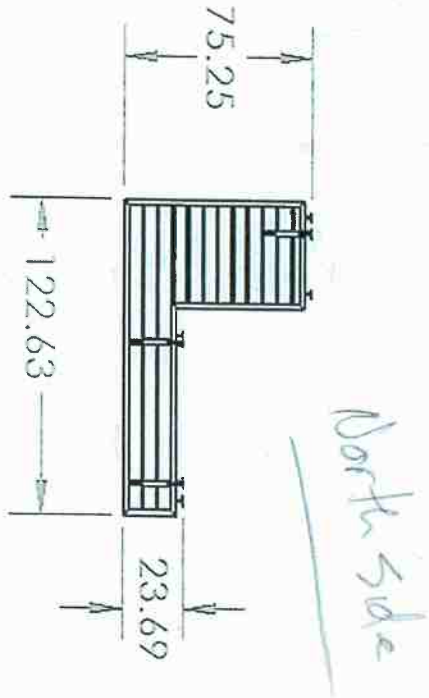
- a. **Special Conditions – Our building was built just up to the property line, we are unaware how this was approved, but it leaves us no leeway to install the already completed awning without crossing over into the neighboring property. A legal easement has been signed and will be provided upon request**
- b. **Granting this variance will not alter the essential character of this locality**
- c. **Granting this variance will not confer any special privilege to the owner.**
- d. **Granting this variance will not affect air and/or light to our neighbor, and will actually positively affect their property value.**

Other Considerations:

Neighborhood opinion. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the BZA or City Council, as applicable, may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the above statutory factors. Residents can often provide important facts that may help the governing body in addressing the above questions, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

Conditions. A city may impose a condition when it grants a variance so long as the condition is directly related to and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

Mr. [unclear]





DocId:8163352

Tx:4098195

Office of County Recorder
County of Martin, Minnesota
I hereby certify that the within
instrument was filed in this office
for recording on 10/15/2024 02:10 PM
and was duly recorded as Document No.
2024R-463152
Michelle Duncan, Martin Co Recorder

REC FEE: 46.00

PAGES: 4

EASEMENT AGREEMENT

This Easement Agreement ("Easement"), dated October 15, 2024, is entered into and made effective as of October 1st, 2024 (the "Effective Date") by and between Smith Rental Properties LLC, a Minnesota limited liability (Grantor), and Scott P. Burtis and Monica E. Burtis, husband and wife, (Grantee).

WHEREAS, Grantor is the owner of certain real property located in the County of Martin, State of Minnesota legally described as follows to wit:

Lots Four (4) and Five (5), Block Two (2), Ward's Farmstead Addition to the City of Fairmont, as per map or plat thereof on file and of record in the office of the Register of Deeds in and for said County and State ("Parcel A").

WHEREAS, Grantee is the owner of certain real property located in the County of Martin, State of Minnesota, legally described as follows to wit:

Lot Three (3) Block Two (2), Ward's Farmstead Addition to the City of Fairmont, as per map or plat thereof on file and of record in the office of the Register of Deeds in and for said County and State ("Parcel B").

WHEREAS, Grantee is the owner of a building located on Parcel B, on which Grantee wishes to construct an awning that will encroach upon Parcel A. Grantee desires to acquire an easement to construct and maintain this awning. Grantor is agreeable to granting the necessary easement rights allowing the encroachment.

NOW, THEREFORE, in consideration of the obligations and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do contract and agree as follows:

1. Grantor hereby grants to Grantee a nonexclusive easement to construct, maintain, and repair an awning over and across the following-described portion of Parcel B: This shall include the right of access to and from the easement area for the purpose of maintaining and repairing the awning.

The North 15 feet of the West 30 feet of Parcel A

2. The easement shall run with the land and be binding on the Grantor and Grantee as well as their respective heirs, designees, successors and assigns.

3. This Easement shall terminate at the earlier of:

- a) mutual agreement to terminate the Agreement or;
- b) the awning ceasing to exist.

4. Grantor, and its successors and assigns, retains, reserves, and shall continue to enjoy the use of the surface of the land subject to this Easement for any and all purposes that do not interfere with or prevent the use by Grantee of the Easement.

5. Grantor further reserves the right to dedicate all or any part of the property affected by this Easement to any city for use as a public street, road, or alley, if the dedication can be accomplished without extinguishing or otherwise interfering with the rights of Grantee in the Easement.

If Grantor or any of Grantor's successors or assigns dedicates all or any part of the property affected by this Easement, the Grantee and its successors and assigns shall execute all instruments that may be necessary or appropriate to effectuate the dedications as long as said instrument acknowledges the easement rights granted hereunder.

6. Grantee shall have the right to keep access to the Easement open by removing vegetation and by cutting or trimming trees or vegetation that may encroach on the easement property. However, the Grantee shall make no changes to the topography of the easement area without first obtaining the written permission of the then owner of Parcel A. Grantee shall dispose of all cuttings and trimmings by hauling them away from the premises.

7. Should Grantee fail to perform any covenant, undertaking, or obligation arising under this Easement. Then in that event the Grantor shall provide the Grantee with written notice setting forth the breach committed by the Grantee. Grantees shall then have thirty days from the date the notice is either hand delivered or deposited in the US mail first class postage prepaid to cure the defect. If a governmental permit is required the Grantee shall apply for such permit in a timely manner and the thirty-day period shall only begin to run upon issuance of the permit. Failure to cure within the time allowed shall result in termination of all rights and privileges granted hereunder, and Grantee shall execute and record all documents necessary to terminate the Easement of record. Should Grantee fail or refuse to record the necessary documents, Grantor shall be entitled to bring an action for the purpose of declaring the Easement to be terminated.

8. To the fullest extent permitted by law, Grantee shall and hereby does indemnify, defend and hold harmless Grantor, Grantor's members, governors, officers, employees, agents and invitees and such persons who are in privity of estate, or to whom Grantor is legally responsible, from and against any and all claims, actions, judgments, damages,

liabilities, costs and expenses, including attorneys' fees, in connection with loss of life, personal injury, bodily injury or damage to property arising from or out of any occurrence relating, directly or indirectly, to any acts or omissions of Grantee, or Grantee's directors, officers, employees, agents, contractors and invitees in the exercise of any of the rights and privileges granted herein, the use of the Easement Area described herein or otherwise undertaken by Grantee within the Easement Area, or with respect to any breaches or defaults by Grantee hereunder. Excluded from the foregoing indemnity are any such losses relating to personal injury, death or property damage to the extent such losses are caused by the willful act or omission of Grantor or Grantor's employees, agents, or contractors.

9. This Agreement contains the entire agreement of the Parties, and shall only be amended by a written document executed by the then owners of Parcel A and Parcel B. All other promises or conditions in any prior agreement, whether oral or written, concerning the subject matter of this Agreement are hereby declared null and void and are of no further force and effect.

10. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

11. This Agreement shall be construed in accordance with the laws of the State of Minnesota.

12. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph of this Agreement or to such other address as one Party may have furnished to the other in writing.


13. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the Parties execute the Agreement as follows:

SMITH RENTAL PROPERTIES, LLC



by Mark Smith, of its President, Grantor



Scott P. Burtis, Grantee

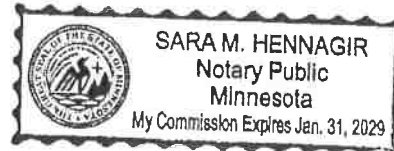


Monica E. Burtis, Grantee

State of Minnesota)
)ss
County of Martin)

This instrument was acknowledged before me on this 15th day of October, 2024 by Mark Smith, President of Smith Rental Properties LLC, a Minnesota Limited Liability Company

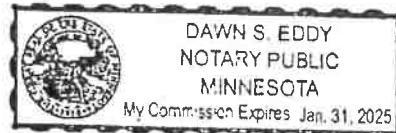
Sara M. Hennagir
Notary Public



State of Minnesota)
)ss
County of Martin)

This instrument was acknowledged before me on this 15th day of October, 2024 by Scott P. Burtis, married to Monica E. Burtis.

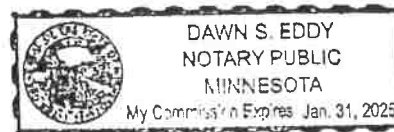
Dawn S. Eddy
Notary Public



State of Minnesota)
)ss
County of Martin)

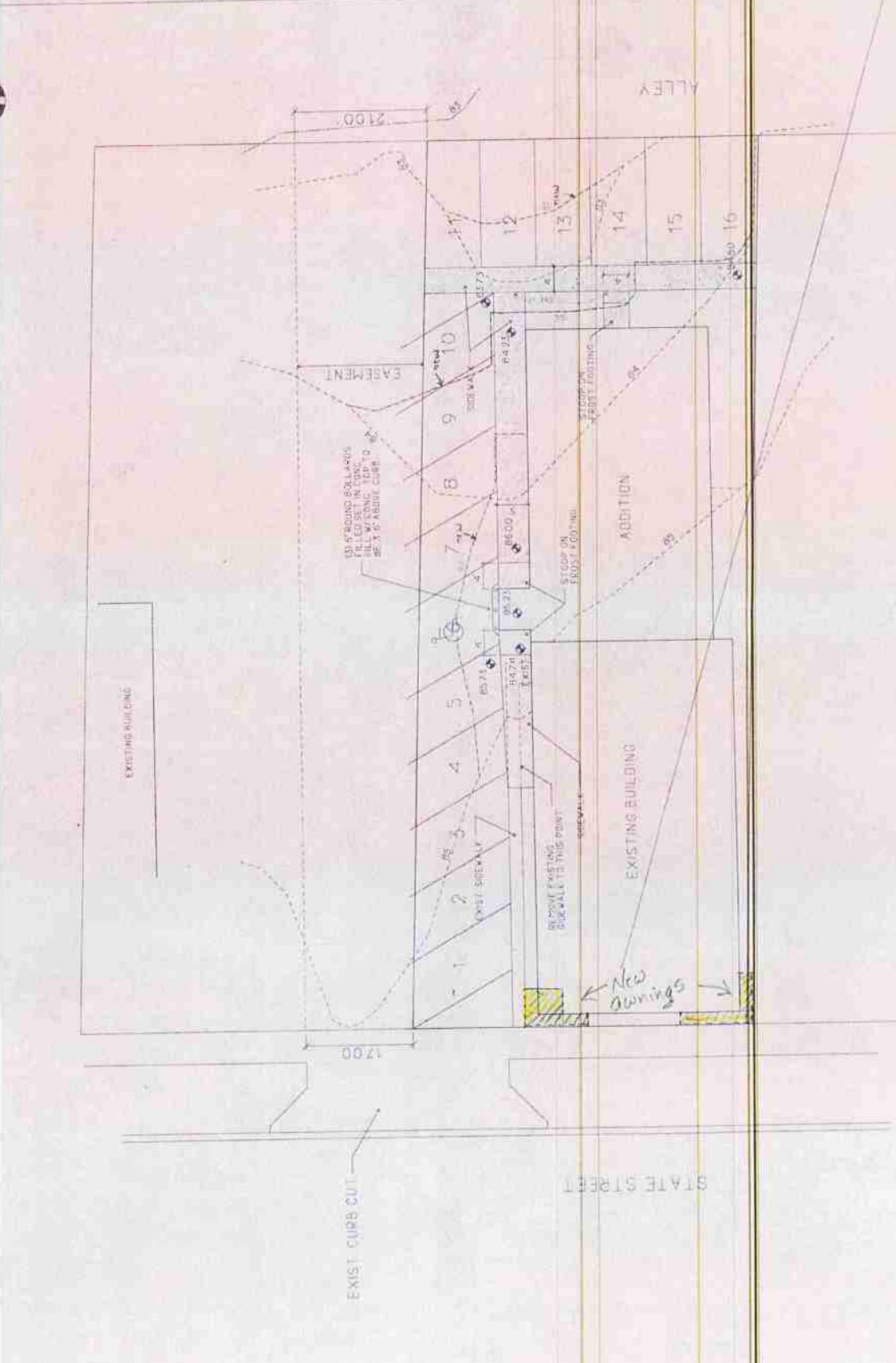
This instrument was acknowledged before me on this 15th day of October, 2024 by Monica E. Burtis, married to Scott P. Burtis.

Dawn S. Eddy
Notary Public



This instrument was drafted by:
Darin G. Haugen (MN Atty. No 0320110)
ERICKSON ZIERKE KUDERER & MADSEN PA
114 West Second Street
Fairmont, MN 56031
(507)238-4711
darin.haugen@ezkm.net

DATE	1/21/18	NO. 1000
PROJECT NO.	1000	
CLIENT		
ARCHITECT		
SCALE	1" = 10'	
PROJECT NO.	1000	
NO.	REVISIONS/DESCRIPTIONS	DATE



DATE: 1/21/18

CITY OF FAIRMONT, MINNESOTA
BOARD OF ZONING APPEALS RESOLUTION BZA #2024-11

A RESOLUTION OF THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT,
MINNESOTA, APPROVING A VARIANCE REQUEST AT 112 N STATE ST

WHEREAS, SCOTT P. AND MONICA E. BURTIS (the “Applicant”) is the owner of a parcel of land located at 112 NORTH STATE STREET (PID No. 23.260.0050) in the City of Fairmont; and

WHEREAS, the above-referenced property is legally described WARD’S FARMSTEAD ADDITION, LOT 3, BLOCK 2 (the “Property”); and

WHEREAS, Chapter 26 of the Fairmont City Code sets the interior side yard setback requirement at 30 feet and front yard setback requirement at 30 feet; and

WHEREAS, the Applicant desires to and has requested a variance to the above standards in order to place a sunshade overhang 2 feet past the southern interior property line and 0 feet from the western front property line; and

WHEREAS, pursuant to Minnesota Statutes, section 462.357, subd. 6, the Board of Zoning Appeals may only grant applications for variances where practical difficulties in complying with the zoning code exist and each of the following criteria are satisfied (see also City Code Section 26-101):

- (a) The variance is in harmony with the general purposes and intent of the zoning code;
- (b) The variance is consistent with the Comprehensive Plan;
- (c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;
- (d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

(e) The variance, if granted, will not alter the essential character of the locality; and

WHEREAS, the Board of Zoning Appeals held a public hearing, following required public notice thereof, on November 12, 2024, and has reviewed the requested variance and has considered the required statutory variance criteria identified in the staff report and proposed findings with respect to such criteria.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT, MINNESOTA, that the Fairmont Board of Zoning Appeals has duly considered the required criteria contained in state law and City Code as applicable to the above-requested variance regarding the property, and hereby adopts the findings of fact contained in the staff report regarding the same, which is attached hereto and incorporated herein by reference as Exhibit A.

BE IT FURTHER RESOLVED that the requested variances to allow a sunshade 2 feet past-the-property-line instead of the required 30-foot southern side yard setback and a 0-foot instead of 30-foot front yard setback for a sunshade is hereby approved based upon the above-referenced adopted findings; contingent upon the following:

1. That the applicant maintain the validity of the private easement allowing the sunshade over the neighboring property and that if there is any legal vacation of the easement by any party the sunshade must be immediately removed.
2. That the applicant apply for and receive an approved building permit for the sunshade before construction begins.
3. That the applicant contact City staff for a Planning & Zoning Department inspection upon completion of the construction or by May 12, 2025, whichever is sooner, to determine compliance with this resolution and related requirements. This inspection may occur at the same time as a Building & Safety Department final inspection.

PASSED by the Board of Zoning Appeals of the City of Fairmont this 12th day of November, 2024.

Adam Smith, Chair

Mike Klujeske, Vice Chair

VOTE: ___ DAVIS ___ JACOBSON ___ KLUJESKE

___ KRUEGER ___ SMITH

EXHIBIT A

Findings of Fact:

INSERT STAFF REPORT WITH CRITERIA