



## Community Development Department

**DATE:** February 13, 2024

**FROM:** Ben Ehreth, Community Development Director

**ITEM:** Gusaas Signs Bismarck Board of Adjustment Appeal

**REQUEST:**

Request of Gusaas Signs to appeal the January 4, 2024, decision of the Bismarck Board of Adjustment to uphold the Planning Manager / Zoning Administrator's interpretation of the zoning ordinance relating to a proposed off-premise advertising sign on Lot 1, Block 1, Basin Electric Fourth Addition.

**BACKGROUND INFORMATION:**

Joe Gusaas is appealing the January 4, 2024, decision of the Bismarck Board of Adjustment to affirm a zoning determination made by the Planning Manager / Zoning Administrator that the dimensional requirements outlined in Section 14-03-3.1-08(4)i would prohibit the installation of an off-premise advertising sign located at 2830 North 19th Street (Lot 1, Block 1, Basin Electric Fourth Addition).

The Board of Adjustment considered this request at their meeting of January 4, 2024. As this was not a public hearing, no residents spoke or submitted written comments. At the conclusion of the hearing, the Board of Adjustment unanimously affirmed the zoning determination made on December 12, 2023, by the Planning Manager / Zoning Administrator with regard to a proposed off-premise advertising sign.

**RECOMMENDED CITY COMMISSION ACTION:**

Consider the appeal of the Board of Adjustment's decision to affirm the Planning Manager / Zoning Administrator's interpretation of the zoning ordinance relating to an off-premise advertising sign.

**STAFF CONTACT INFORMATION:**

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov  
Daniel Nairn, Planning Manager, 701-355-1854, dnairn@bismarcknd.gov  
Jenny Wollmuth, Senior Planner, 701-355-1850, jwollmuth@bismarcknd.gov

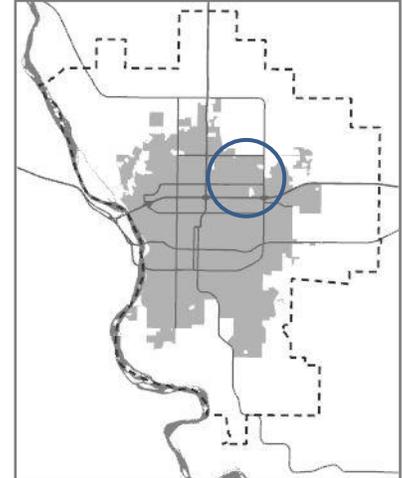
**ATTACHMENTS:**

1. Gusaas Sign BOA Appeal



**Project Summary**

<i>Title:</i>	Lot 1, Block 1, Basin Electric 4 <sup>th</sup> Addition (2830 North 19 <sup>th</sup> Street)
<i>Status:</i>	Board of City Commissioners
<i>Owner(s):</i>	Columbo LLC
<i>Project Contact:</i>	Joe Gusaas, Gusaas Signs
<i>Location:</i>	In northeast Bismarck, in the southwest quadrant of the intersection of East Century Avenue and North 19 <sup>th</sup> Street



**Appeal of Zoning Determination**

Joe Gusaas is appealing the January 4, 2024 decision of the Bismarck Board of Adjustment to affirm a zoning determination made by the Planning Manager / Zoning Administrator that the dimensional requirements outlined in Section 14-03-3.1-08(4)i would prohibit the installation of an off-premise advertising sign located at 2830 North 19th Street (Lot 1, Block 1, Basin Electric Fourth Addition).

*Background Information*

This property was zoned from the RT – Residential zoning district to the Conditional CA – Commercial in September 2023. An off-premise advertising sign is not permitted within the RT – Residential zoning district.

Prior to rezoning the property and during the rezoning process, Planning staff communicated to the property owner, both in private communications and public documents, that an off-premise advertising sign could not be placed on the property as it would not meet the required spacing distance from the intersection of East Century Avenue and North 19<sup>th</sup> Street. A copy of the staff report relating to the zoning change is included for your review.

The zoning ordinance requires an off-premise sign to be placed at least 200 feet from the center point of any intersection of an arterial (East Century Avenue) and arterial and/or collector roadway (North 19<sup>th</sup> Street), which is also the NE ¼ of the NW ¼ of Section 27, T139M-R80W. It should be noted that all spacing distances are measured as the linear distance along the centerline of the roadway. The western boundary of the property is exactly 200 feet from the center point of the intersection, therefore there is no location within the property that would meet this requirement.

A building permit for an off-premise advertising sign on this property was submitted and denied by the Building Inspection Department in October 2023 as the proposed sign did not meet the criteria for approval

*(continued)*

outlined in the zoning ordinance. Planning staff explained that the spacing requirement was added to the zoning ordinance in 2016. Planning staff offered to discuss a possible amendment to the ordinance with other City staff, including those from the Bismarck Police Department and the City Engineering Department who helped craft the ordinance requirements in 2016. City staff affirmed that they would not be supportive of any changes to the ordinance that would allow the proposed sign to be placed on the property.

### **Applicable Sections of the Zoning Ordinance**

Section 14-06-03(1) of the City Code of Ordinances (Appeal Procedure / Appeal – How Taken) states, “An appeal to the board of adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Zoning Administrator and with the board of adjustment at the community development department, a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Zoning Administrator and on due cause shown.”

Section 14-03.1 of the City Code of Ordinances (Signs / Off-Premise Advertising Signs – Spacing) states, “Any and all parts of the sign, whether static or digital, shall be located at least three hundred (300) feet from any part of an existing or approved off-premise advertising sign, whether static or digital; at least two hundred (200) feet from the center point of any intersection of arterial and an arterial and/or collector roadway; and at least five hundred (500) feet from the nearest right-of-way of an interstate interchange. In addition, all parts of a digital off-premise advertising sign shall be located at least twelve hundred (1,200) feet from any part of an existing or approved digital off-premise advertising sign. Distance is measured as the linear distance along the centerline of the roadway toward which the sign is oriented. The distance shall be measured between any two signs on the same or opposite sides of this roadway.”

### **Staff analysis and determination**

The Planning Manager / Zoning Administrator has reviewed the zoning ordinance and the proposed request, and has determined that the dimensional requirements outlined in the zoning ordinance would prohibit the installation of an off-premise advertising sign located at 2830 North 19<sup>th</sup> Street (Lot 1, Block 1, Basin Electric Fourth Addition).

### **Attachments**

1. Appeal of Zoning Determination
2. Zoning Determination
3. Site Exhibit
4. Bismarck Board of Adjustment Minutes (01/04/24)

*(continued)*

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*Staff report prepared by:* Jenny Wollmuth, AICP, CFM, Senior Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

## Jenny Wollmuth

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**From:** Joe Gusaas [REDACTED]  
**Sent:** Friday, December 8, 2023 8:18 AM  
**To:** Daniel Nairn  
**Cc:** Jenny Wollmuth; Mark Kern  
**Subject:** Re: Off-Premise Advertising Sign Measurements

**CAUTION: \*\*\*External Email - Use caution clicking links or opening attachments\*\*\***

Daniel,

I would like to appeal the denial of this permit. What are the steps I need to take to do so?

Thanks,  
Joe Gusaas  
Gusaas Signs

On Dec 6, 2023, at 11:11 AM, Daniel Nairn <dnairn@bismarcknd.gov> wrote:

Joe,

Thanks for following up. I had a full day yesterday, but now have some time to send a more thorough response. We did raise this issue during our plat review meeting on Monday, and the general consensus of the City staff group is that there is no desire to change the sign code to reduce the spacing distance for off-premise advertising signs from intersections.

The spacing distance requirement, including the method of measuring as a linear distance along the centerline of the adjacent roadway, originated from Ordinance 6190 which was adopted in March 2016. Many of the staff in this week's meeting were involved in that process and affirmed that maintaining distances from intersections was the intent.

Based on the images you sent, we did research and confirmed that other cities in our region generally do not have specific spacing distances from intersections and rely on more subjective judgements for interference or sight distance obstruction. Signs have been placed closer to intersections than we allow. This appears to be one provisions in which Bismarck is more restrictive than our peers. That was communicated during the meeting but did not change the outcome.

You have the right to appeal a determination to deny a sign permit. However, as a reminder the grounds for this appeal are whether the provisions of Section 14-03.1-08(14) Off-Premise Advertising Signs are being accurately applied as written. This is not a vehicle for changing the ordinance or varying from it.

Best,

**Daniel Nairn, AICP**  
Planning Manager

**City of Bismarck - Community Development Department**



December 12, 2023

Joe Gusaas  
Gusaas Signs  
800 Calypso Dr  
Bismarck, ND 58504

RE: Section 14-03.1-05(4) Off-Premise Advertising Signs Zoning Determination

Dear Mr. Gusaas,

The purpose of this letter is to provide you with a zoning determination for the proposed installation of an off-premise advertising sign on the property of 2830 North 19th Street or Lot 1, Block 1, Basin Electric Fourth Addition.

The subject property is located within the Conditional CG – Commercial zoning district. Off-premise advertising signs are an allowable use within this zoning district. However, spacing distances are required by ordinance between any two off-premise advertising signs and between an off-premise advertising sign and a roadway intersection, according to Section 14-03.1-05(4)i. The intersection of East Century Avenue, an arterial roadway, and North 19<sup>th</sup> Street, a collector roadway, is at the northeast corner of the subject lot. The minimum required distance between the center point of an intersection of a collector and arterial roadway and any part of a sign is 200 feet.

All spacing distances required in this provision are measured “as the linear distance along the centerline of the roadway toward which the sign is oriented.” In this case, the measurement would be taken from the intersection center point, which is also the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 27 T139N-R80W, to the west along East Century Avenue for a distance of 200 feet. The distance to the west lot line is exactly 200 feet, so there is no location on the subject lot that exceeds the minimum spacing distance.

Off-premise advertising signs are only permitted when adjacent to (i.e. oriented toward) an arterial roadway, according to Section 14-03.1-05(4)d. Therefore, it would not be permissible to place the sign adjacent to North 19<sup>th</sup> Street.

This property was recently rezoned from RT – Residential, within which off-premise advertising signs are not permitted. Ordinance 6557 was approved by the City Commission on August 22,

2023 to effect this change. During the review process for this zoning change, the applicant and property owners were advised on numerous occasions, both in private communications and public documents, that dimensional requirements would disallow the installation of an off-premise advertising sign on the subject lot. For example, the staff report to the June 28, 2023 Planning and Zoning Commission meeting stated the following:

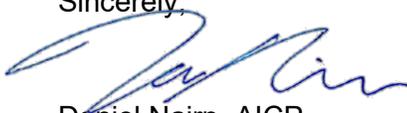
“It should be noted that an off-premise advertising sign (billboard) would not be permitted on either Lot 1 or Lot 2, Basin Electric Fourth Addition, regardless of zoning. There are no locations on this property that would comply with required spacing distance from the intersection of East Century Avenue and North 19th Street. Furthermore, the Highway Beautification Act of 1965, and North Dakota’s agreement to comply, does not recognize commercial rezoning “created primarily to permit outdoor advertising structures” as valid for the purposes of permitting billboards.”

The ordinance provisions in question originated from Ordinance 6190, which was adopted in March 2016.

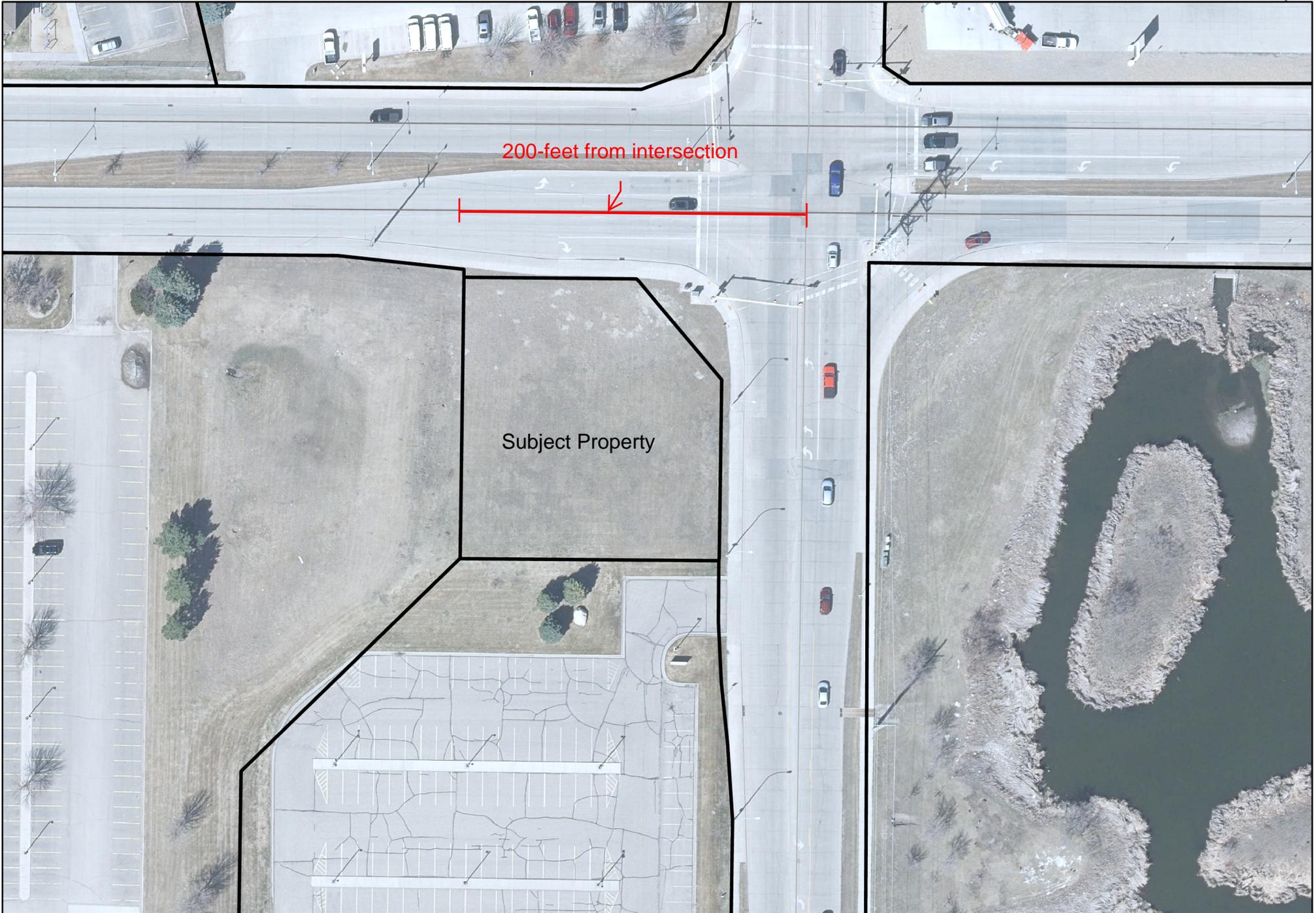
You have the right to appeal any interpretation or determination made by the Zoning Administrator or any other administrative official to the City’s Board of Adjustment.

Please let me know if you have any questions or need any additional information.

Sincerely,



Daniel Nairn, AICP  
Planning Manager/Zoning Administrator



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
January 4, 2024**

The Bismarck Board of Adjustment met on January 4, 2024, at 5:30 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street.

Board members present were Curtis Janssen, Jennifer Clark, Chris Seifert, Al Wangler, Rick Wohl, and alternate Ken Hoff.

Staff members present were, Janelle Combs – City Attorney, Jenny Wollmuth – Senior Planner, Daniel Nairn – Planning Manager, Brady Blaskowski – Building Official, and Tracy Walters – Office Assistant II.

**TERMS AND OATHS OF OFFICE:**

Vice Chair Clark stated that Curt Janssen has been re-appointed to the Board of Adjustment and she also welcomed new Board member, Al Wangler. She stated that Mr. Janssen and Mr. Wangler have both signed the Oath of Office prior to the start of the meeting of the Board of Adjustment.

**ELECTION OF OFFICERS:**

Vice Chair Clark asked for nominations for Chairman of the Board of Adjustment Committee.

**NOMINATION:** Mr. Seifert nominated Jennifer Clark for Chairman of the Board of Adjustment. Mr. Wohl seconded the nomination with Board members Janssen, Seifert, Wangler Wohl, and Clark all in favor. Jennifer Clark is voted as Chairman of the Board of Adjustment.

Chair Clark asked for nominations for Vice Chairman of the Board of Adjustment.

**NOMINATION:** Mr. Wohl nominated Chirs Seifert for Vice Chairman of the Board of Adjustment. Mr. Wangler seconded the nomination with Board members Janssen, Wangler, Wohl, Seifert and Clark all in favor. Chris Seifert is voted as Vice Chairman of the Board of Adjustment.

**MINUTES:**

Chair Clark called for approval of the minutes of the October 5, 2023 meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Seifert and seconded by Mr. Janssen to approve the minutes of the October 5, 2023 meeting. Board members Janssen, Seifert, Wangler, Wohl and Chair Clark all voted in favor and the minutes were approved.

**APPEAL OF ZONING DETERMINATION | OFF-PREMISE ADVERTISING SIGN – LOT 1, BLOCK 1, BASIN ELECTRIC FOURTH ADDITION (2830 NORTH 19<sup>th</sup> STREET).**

Ms. Wollmuth stated Joe Gusaas, with Gusaas Signs is appealing a zoning determination made on December 12, 2023, by the Planning Manager / Zoning Administrator with regard to a

proposed off-premise advertising sign to be located on Lot 1, Block 1, Basin Electric Fourth Addition (2830 North 19<sup>th</sup> Street).

Ms. Wollmuth stated this property is located in northeast Bismarck, in the southwest quadrant of the intersection of East Century Avenue and North 19<sup>th</sup> Street and was recently rezoned from the RT – Residential zoning district to the conditional CG – Commercial zoning district. Planning staff did communicate with the property owner prior to the rezoning of the property and during the rezoning process that an off-premise advertising sign could not be placed on the property as it would not meet the required spacing distance from the intersection of East Century Avenue and North 19<sup>th</sup> Street.

Ms. Wollmuth also stated the zoning ordinance requires an off-premise sign to be placed at least 200 feet from the center point of an intersection of an arterial roadway (East Century Avenue) and collector roadway (North 19<sup>th</sup> Street). She also noted that all spacing distances are measured as linear distance along the centerline of the roadway. The western boundary of the property is exactly two hundred (200) feet from the center point of the intersection, therefore is no location within the property that would meet this requirement. This requirement was added to the zoning ordinance in 2016.

Ms. Wollmuth added that a building permit was submitted for the proposed sign but it was denied. After the permit was denied, Planning staff offered to discuss a possible amendment to the ordinance with other City staff, including those from the Bismarck police Department and City Engineering Department, who helped create the ordinance requirements in 2016. City staff stated they would not be supportive of any changes to the ordinance that would allow the proposed sign to be placed on this property.

Ms. Wollmuth also stated the Planning Manager / Zoning Administrator, Daniel Nairn has reviewed the zoning ordinance and the proposed request. Mr. Nairn has determined that the dimensional requirements outlined in the zoning ordinance would prohibit the installation of an off-premise advertising sign located at 2830 North 19<sup>th</sup> Street (Lot 1, Block 1, Basin Electric Fourth Addition). She also stated that both the Planning Manager and Building Official are here to answer questions, and asked if the Board had any questions for her at this time.

Chair Clark asked Ms. Wollmuth for clarification on whether the Board was to find that there is a hardship in the case or if their job was only to determine whether the ordinance was applied correctly.

Ms. Wollmuth replied that this is not a variance request and finding a hardship was not required. The Board must determine whether the ordinance was applied correctly.

Chair Clark invited the applicant to come forward at this time.

Joe Gusaas, with Gusaas Signs came forward and provided an example of a sign that was permitted at Calgary Avenue and State Street between 2020 and 2021. The exhibit that he displayed is closer to approximately thirty-five (35) feet from the roadway to the south (East Calgary Avenue) and roughly two hundred fifty (250) feet from the intersection. Mr. Gusaas also displayed Section 14-03.1-05 (i) of the ordinance. He discussed the different ways that the ordinance could be interpreted, and he believes that different interpretations lead up to the denial of the building permit. He then displayed an exhibit of the property located at 2830 North 19<sup>th</sup> Street that he presented to City Staff and asked if the area in orange on the exhibit was permissible. Mr. Gusaas stated he received a yes answer with the condition it would also have

to be approved by the Chief of Police, and the Traffic Engineer. He went on to say that upon turning in the building permit, staff once again questioned the ordinance interpretation and asked him to not apply any more resources to the project until the ordinance could be interpreted correctly. Mr. Gusaas asked the Board if they had any questions for him.

Chair Clark asked if anyone had questions for Mr. Gusaas.

Mr. Janssen asked Mr. Gussas why he included a radius in his third exhibit that he showed the Board.

Mr. Gusaas stated he added the radius as a crow flies measurement to illustrate that it was two hundred (200) feet.

Mr. Janssen asked for clarification that the ordinance reads measurements by linear distance, and not by radius.

Mr. Gusaas answered that the second sentence in the paragraph of the ordinance measures between structures, and then by linear distance. He went on to say that interpreting the ordinance may be slightly different for every individual. He believes that he is not the only one who interpreted the ordinance in a way that makes the sign permissible.

Mr. Janssen asked if everyone involved in the request was clearly informed of the sign requirements and ordinance interpretation when the property was rezoned.

Mr. Gusaas stated that the landowners had been properly informed, but he is not the landowner. He went on to say that if the City computers had been updated and showed that the property was re-zoned on the day that he applied for the permit, the Building Official, Brady Blaskowski, would not have contacted the Planning Manager, Daniel Nairn regarding this matter, and that the permit would have been issued.

Mr. Janssen asked if it would have been issued because the ordinance was interpreted differently.

Mr. Gussas stated that the Building Official had initially interpreted the ordinance in a way that the permit could have been issued.

Jed Fluhrer, one of the property owners, came forward and confirmed that it was communicated to the landowners that they could not have the off-premise sign at this location. He stated that he could not disagree with the interpretation of the ordinance until the property was re-zoned. Once the property was re-zoned, the process of having an interpretation of the ordinance was conducted by City staff. He stated the landowners disagreed with the City staff's decision and this is the reason they are here today to have a discussion with the Board of Adjustment.

Mr. Janssen asked Mr. Fluhrer if he was aware when he bought the property that there might be a possibility they could not have the sign on the premises.

Mr. Fluhrer stated they had compared similar signs that were approved in the past and believed that they would be able to have the sign.

Mr. Janssen asked that if they were unable to put up the proposed off-premise sign, would they still have the ability to put a sign on the building.

Mr. Fluhrer stated that he would like to add an off-premise sign and had not discussed putting a sign on the building at this time.

Chair Clark asked if Board members had any additional questions for the appellant or for Staff.

Mr. Janssen asked City staff to address the fact that if the computer system had been updated at the time Mr. Gusaas had spoken with the Building Official, Brady Blaskowski, that we would not be having this discussion today.

Mr. Blaskowski stated that if the zoning had been changed in the GIS software, he believes it is possible we would have issued the permit as he was interpreting the ordinance differently in the past. After having a conversation with the Planning Manager / Zoning Administrator, Daniel Nairn, he stated he was applying the zoning ordinance incorrectly.

Chair Clark asked if there were any additional questions or discussion from the Board.

Mr. Wohl stated that he feels for the applicant, however, the appeal is not based on the examples provided by the applicant. He went on to say that if the ordinance was interpreted differently in the past, we can't bring that into the present situation.

Chair Clark stated she agreed with Mr. Wohl's statement. She went on to say that the entity that is responsible for enforcing the ordinance is also responsible for interpreting the ordinance.

**MOTION:** Mr. Wohl made a motion to affirm the decision made by the Planning Manager / Zoning Administrator. Mr. Wagner seconded the motion with Board members Janssen, Seifert, Wohl, Wagner and Chair Clark all in favor, the motion was approved.

#### **OTHER BUSINESS:**

#### **RESOLUTION OF APPRECIATION FOR MICHAEL MARBACK.**

Chair Clark read the Resolution of Appreciation for Michael Marback. See the Resolution of Appreciation in the attachments of the minutes.

#### **BYLAWS:**

The bylaws were presented with the meeting packet for approval at this time.

**MOTION:** Mr. Seifert made a motion to approve the bylaws. Mr. Janssen seconded the motion with Board Members, Janssen, Seifert, Wangler, Wohl and Chair Clark in favor, the motion was unanimously approved.

#### **CITY ATTORNEY JANNELE COMBS, BOARD OF ADJUSTMENT | PROCEDURE AND PROTOCOL.**

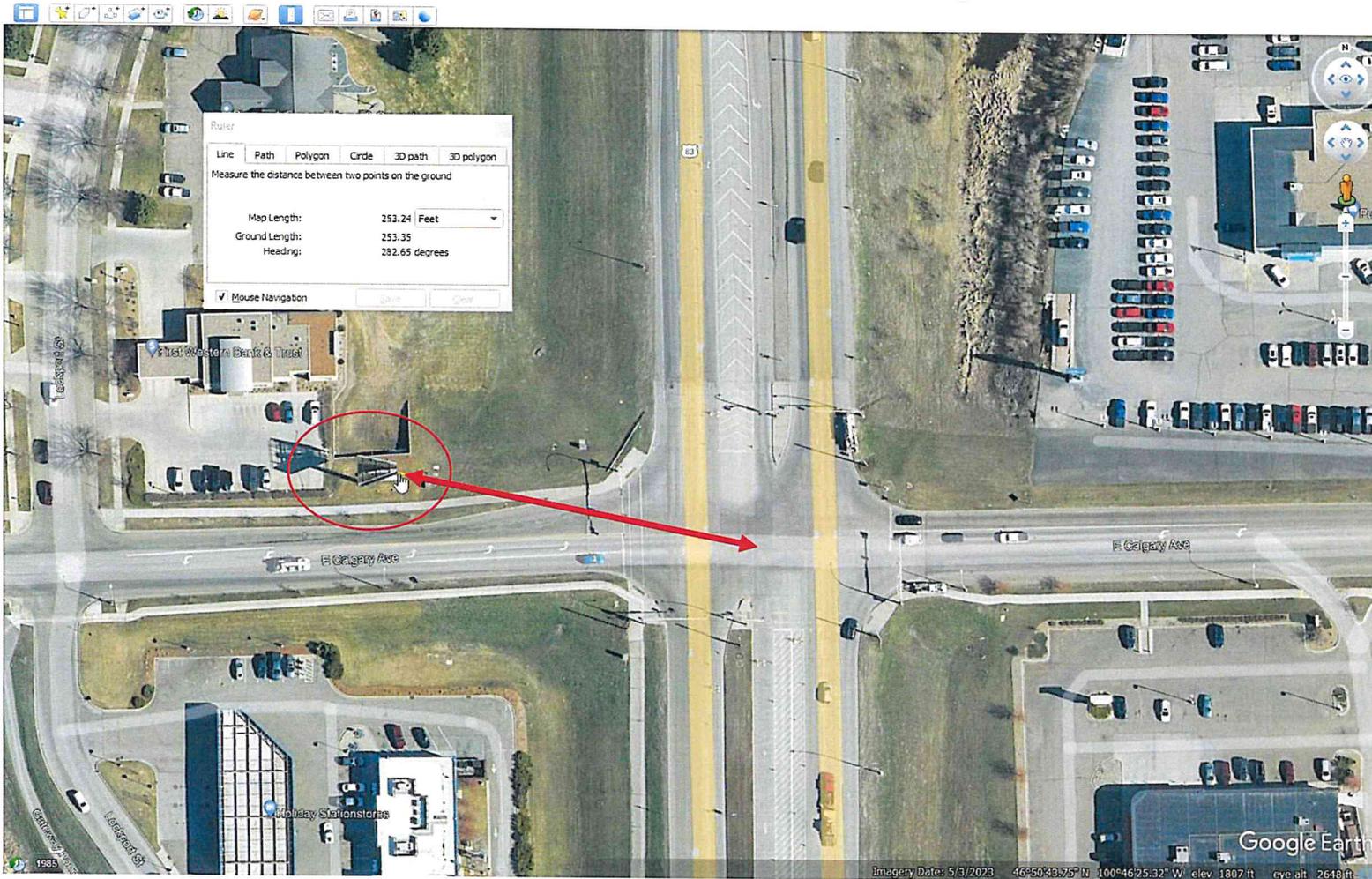
City Attorney Jannelle Combs presented an overview of variance law, procedures and protocol to the Board of Adjustment.

#### **ADJOURNMENT:**

There being no other business, Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 6:24 p.m. to meet again on February 1, 2024.

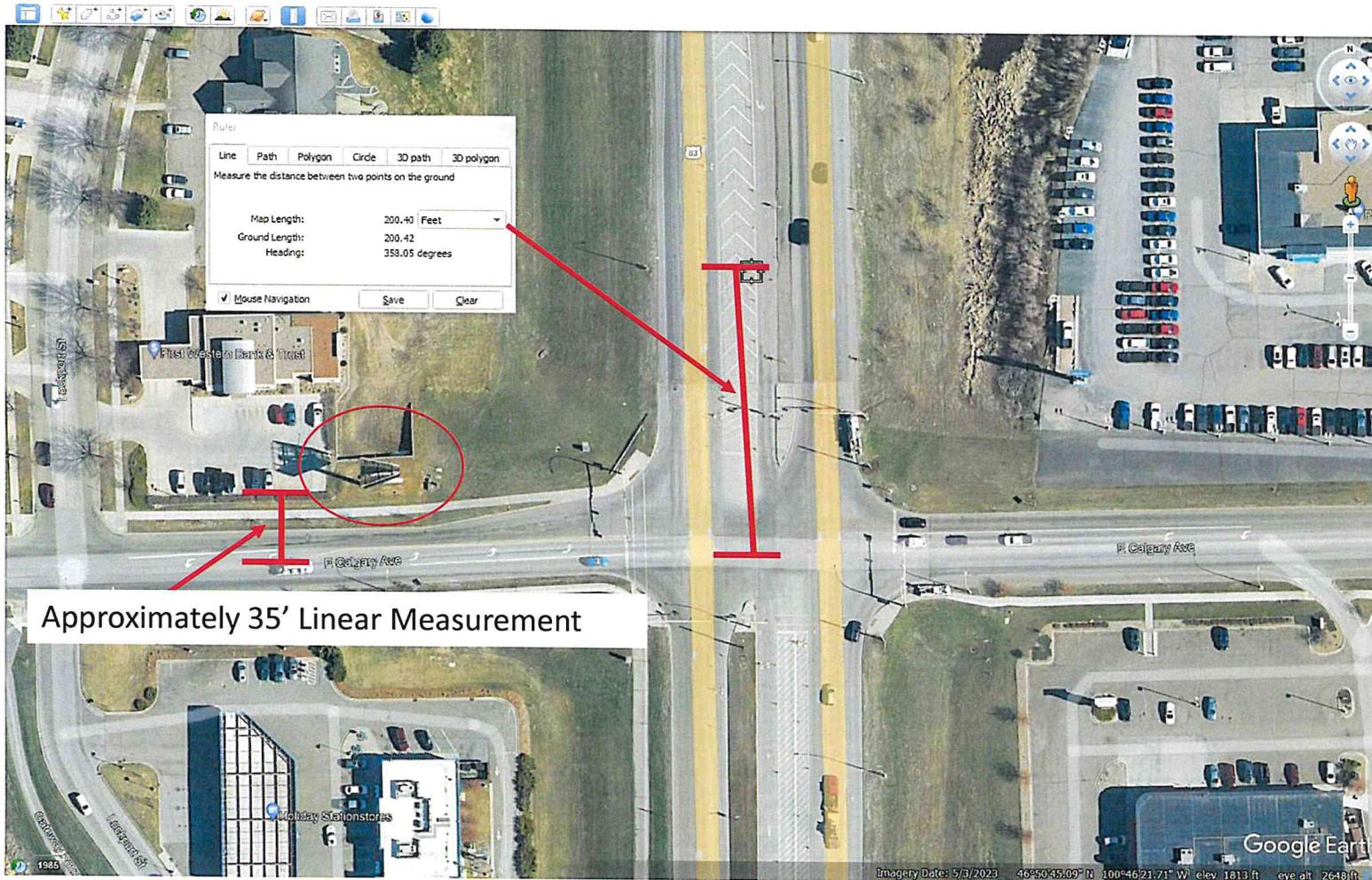
DRAFT

## Sign Example – Idigital from Fargo



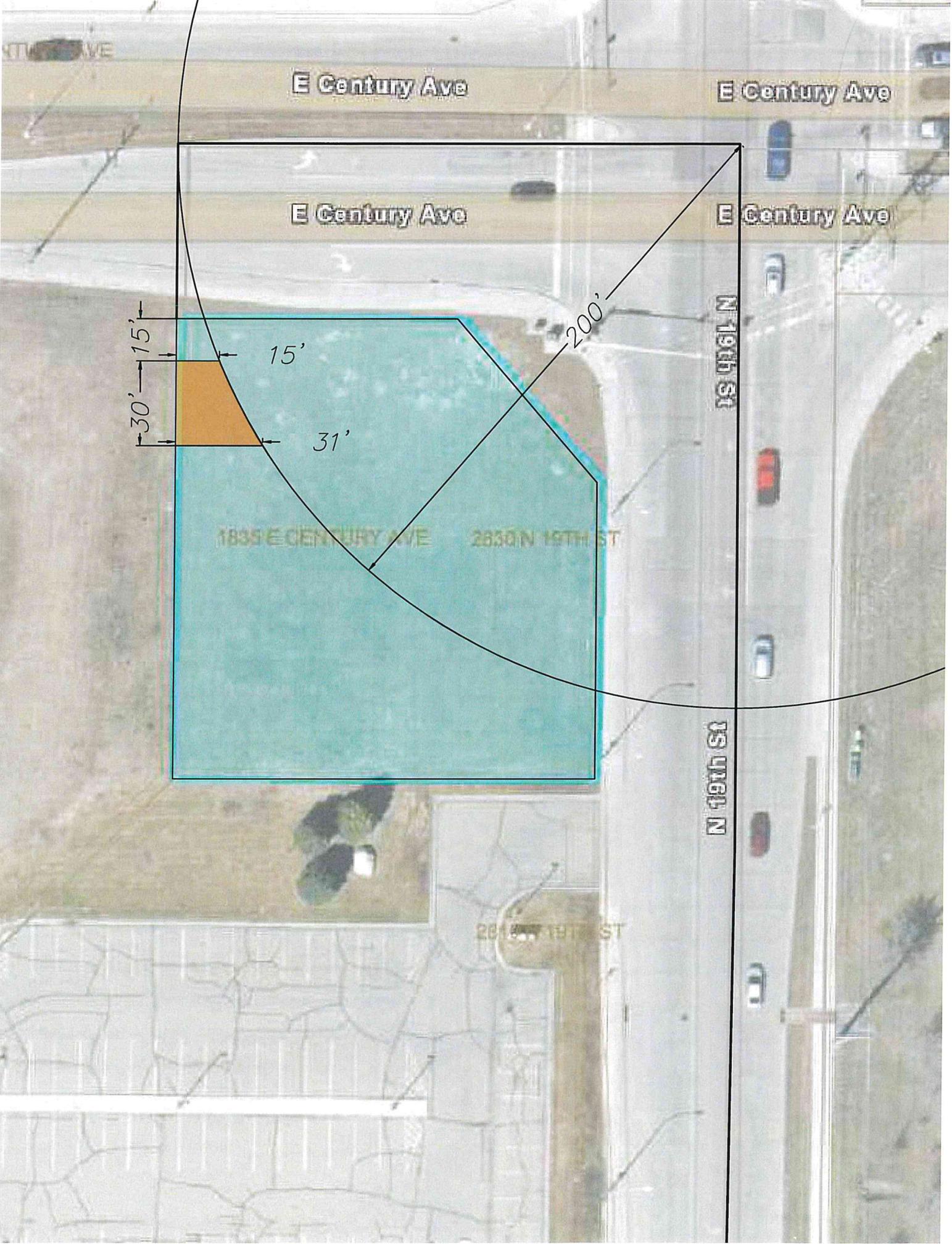
- Calgary Ave & State Street
- Bismarck, ND
- ~ 250' as the crow flies measurement
- 26,000 cars per day NDDOT

## Sign Example - Idigital from Fargo



## Calgary Ave & State Street Bismarck, ND

- Put up in 2020-2021 timeframe – post moratorium
- Does not meet the linear 200' measurement



E Century Ave

E Century Ave

E Century Ave

E Century Ave

15'  
30'

15'

31'

200'

N 19th St

N 19th St

1835 E CENTURY AVE

2830 N 19TH ST

2815 N 19TH ST

area on the perimeter of the sign face for extension elements. All sign extension space shall be of the same material as the sign face.

g. Number of Faces. The sign shall have no more than two (2) faces.

h. Height of Signs. The sign shall not exceed fifty (50) feet in height, and the sign face shall have a clearance of at least ten (10) feet.

i. Spacing. Any and all parts of the sign, whether static or digital, shall be located at least three hundred (300) feet from any part of an existing or approved off-premise advertising sign, whether static or digital; at least two hundred (200) feet from the center point of any intersection of an arterial and an arterial and/or collector roadway; and at least five hundred (500) feet from the nearest right-of-way of an interstate interchange. In addition, all parts of a digital off-premise advertising sign shall be located at least twelve hundred (1,200) feet from any part of an existing or approved digital off-premise advertising sign. Distance is measured as the linear distance along the centerline of the roadway toward which the sign is oriented. The distance shall be measured between any two signs on the same or opposite sides of this roadway.

j. Residential Setback. The sign shall be located at least three hundred (300) feet from any residential zoning district, as measured from any part of the sign to the nearest property line within any residential zoning district.

k. No Obstruction of View. The sign shall not obstruct any other existing sign, either off-premise or on-premise.

l. Digital Signs. Digital off-premise advertising signs shall meet the following additional standards:

i. The sign shall have a frame hold time of no less than seven (7) seconds and must transition instantaneously from one static image to another static image without any special effects. The use of streaming video, full-motion video, animation or frame effects is prohibited.

ii. The sign shall have a default mechanism that shall freeze the sign in one position as a static message if a malfunction occurs; and

ii. The sign shall have a mechanism able to automatically adjust the illuminative brightness of the display according to ambient light conditions by means of a light detector/photocell.