

BOARD OF ADJUSTMENT
Tuesday, January 23, 2024 | 9:00AM
City Commission Chambers
AGENDA

1. Approve Minutes – October 24, 2023
2. New Business
 - a. Variance Request – 3377 39th Street South
 - i. Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow construction at a lower elevation than would otherwise be required by the City’s Floodproofing Code.
3. Other Business
4. Adjourn – Next Meeting: February 27, 2024

Board of Adjustment meetings are broadcast live on cable channel TV Fargo 56 and can be seen live by video stream on www.FargoND.gov/streaming. They are rebroadcast each Tuesday at 9:00 a.m. for one month following the meeting.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Planning Office at 701.241.1474 or TDD at 701.241.8258. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

BOARD OF ADJUSTMENT MINUTES

Regular Meeting:

Tuesday, October 24, 2023

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 9:00 a.m., Tuesday, October 24, 2023.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Jared Heller, Michael Love, Michael Orth

Absent: None

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of September 26, 2023

Member Boreen moved the minutes of the September 26, 2023 Board of Adjustment meeting be approved. Second by Member Orth. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a. CONTINUED - Appeal of Administrative Decision – 338 9th Avenue South
Appellant claims staff erred in its determination to approve a Land Management Plan / Permit issued at 338 9th Avenue South. Land Management Plan / Permits allow plantings to exceed the maximum 8 inch length as defined by the City of Fargo Municipal Code, Article 11-08.

Planning Coordinator Kim Cltrowske provided an overview of the process for an appeal of an administrative decision.

City Forester Scott Liudahl presented the appeal, gave a background and timeline of the application, land management plans, and the process for approving and appealing them.

Discussion was held on the agreement between the adjacent property owner managing the maintenance plan and the City of Fargo, and how the plan works in the future if the property changes hands.

City Attorney Nancy Morris clarified that the agreement is with the current property owner and would not continue under a new owner.

Discussion continued on the management plan and frequency of maintenance.

Appellant Marilyn Seitz, 327 10th Avenue South, spoke on behalf of the appeal.

Ms. Morris spoke on the permit process.

Member Boreen moved the findings of staff be accepted and to affirm staff's decision to approve the land management plan/permit as presented and deny the appeal. Second by Member Orth. Upon call of the roll Members Wendel-Daub, Boreen, Heller, Orth, and Love voted aye and the motion was declared carried.

Item 3: 2024 Meeting Dates

Chair Love noted the dates of the 2024 scheduled meetings are included in the packet.

Item 4: Other Business

No other business was presented.

Item 5: Adjournment: Next Meeting: November 28, 2023

Member Boreen moved to adjourn the meeting at 9:11 a.m. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

CITY OF FARGO - Board of Adjustment Variance Staff Report

Item No: 2.a	Date: January 23, 2024
Address: 3377 39th Street South	
Legal Description: Lot 1 (Less), Block 1, Asleson Industrial Park 3rd Addition	
Owner(s)/Applicants: Michael Casper, Prairie Commons Partners LLC/Andrew Thill (Lowry Engineering)	
Reason For Request: To construct a building that would have a lowest opening and fill elevations below what would otherwise be required by the City's Floodproofing Code.	
Zoning District: LI: Limited Industrial (Commercial)	
Status: Board of Adjustment Public Hearing: January 23, 2024	

Floodproofing Code Standards	Proposed Structure
Elevations:	Elevations:
Lowest opening: FEMA BFE plus 2' 907.7	Lowest opening: 1.0' below required 907.7 906.7 (FEMA BFE 905.7 plus 2.0')
Adjacent fill: FEMA BFE plus 0.7' 906.4	Adjacent fill: 0.2' below required 906.4 906.2 (FEMA BFE 905.7 plus 0.7')
Fill within 15': At or above FEMA BFE 905.7	Fill within 15': 0.5' below required elevation 905.2 (FEMA BFE 905.7)

Background:

The applicant has proposed to construct a building at a lower elevation than required by the current City of Fargo Flood Proofing Code. The proposed building would have a lowest opening, adjacent fill and fill 15 feet from building at elevations lower than required by the City's Floodproofing Code. The property and proposed building are within both the 41-foot water surface elevation inundation area (WSEIA) and FEMA-designated Special Flood Hazard Area (1% annual chance floodplain). At this location, the FEMA base floodplain elevation (BFE) is 905.7 feet and the 41-foot WSEIA is at an elevation of 906.6 feet.

Since this proposed building is within the FEMA Special Flood Hazard Area, the Floodproofing Code requirements are as follows:

1. The lowest opening in a primary building is required to be at or above an elevation that is 2 feet above the FEMA BFE elevation. (905.7-foot FEMA BFE elevation plus 2 feet = 907.7')
2. The fill adjacent to the building is required to be at or above an elevation that is 0.7 feet above the FEMA BFE elevation. (905.7-foot FEMA BFE elevation plus 0.7 feet = 906.4')
3. The fill within 15 feet of the building must be at or above the FEMA BFE (905.7')

The lowest opening of the proposed structure would be at an elevation of 906.7 feet, which is 1.0 foot lower than what is required for the lowest opening elevation (BFE+2'). Additionally, the fill adjacent to the building would be at an elevation of 906.2 feet, which is 0.2 feet lower than required. Lastly, the fill within 15 feet of the building would be 905.2 feet, which is 0.5 feet lower than required. The applicant is requesting the variance in order to construct a building that would have a lowest opening, adjacent fill and the fill 15' from building at an elevation below what would otherwise be required by the City's Floodproofing Code.

According to the applicant, the proposed variance is necessary to construct the building so as to have the similar finished floor elevations as the existing surrounding buildings, which were constructed prior to the City's current floodproofing elevation requirements. Additional details are provided by the applicant within the attached application materials.

Criteria for Approval:

The Floodproofing Code was enacted by reference within Article 21-06 (Flood Plain Management) of the Fargo Municipal Code. Appeals from Article 21-06 are heard and decided upon by the Board of Adjustment as outlined within Section 21-0603 of the Municipal Code.

§21-0603.G.5 of the Municipal Code states that, *In determining appeals or requests for variances, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:*

- a. The danger that materials may be swept onto other lands to the injury of others;*
- b. The danger to life and property due to flooding or erosion damage;*
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;*
- d. The importance of the services provided by the proposed facility to the community;*
- e. The necessity to the facility of a waterfront location, where applicable;*
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;*
- g. The compatibility of the proposed use with the existing and anticipated development;*
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program or that area;*
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;*
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,*
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.*

§21-0603.H.1 of the Municipal Code includes additional considerations for variances:

- 1. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items (a-k) in subsection (G)(5) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increases.*
- 2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or any state or local inventory or register of historic places without regard to the procedures set forth in the remainder of this section.*
- 3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.*
- 4. Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
- 5. Variances shall be issued only upon:*
 - a. A showing of good and sufficient cause;*
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and*
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*

6. *Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation requirement and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.*

Staff Analysis:

- a. The danger that materials may be swept onto other lands to the injury of others;**
Minimal probability
- b. The danger to life and property due to flooding or erosion damage;**
Minimal probability
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;**
Minimal probability
- d. The importance of the services provided by the proposed facility to the community;**
The facility provides storage and garage space for the parcel tenants with no connections to City sanitary sewer or water. In a flood situation, it would not impact city infrastructure.
- e. The necessity to the facility of a waterfront location, where applicable;**
Not applicable. The proposed building is not in the MDZS or the LDZS river setback zones.
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**
The proposed use is for additional storage and garage space for the existing structures.
- g. The compatibility of the proposed use with the existing and anticipated development;**
There is no proposed change in use. The use is compatible with existing and anticipated development at this location. The proposed improvements will have matching ground elevations similar to the existing structures.
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
No inconsistencies have been identified in relation to the comprehensive plan. Floodplain management is related to the City's floodproofing policies as part of the FEMA BFE and the 41' WSEIA elevation requirements.
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;**
Access may be limited as servicing roadways may become inundated during riverine flooding or heavy rainfall events. The applicant will need to understand this potential risk as staff has no data to suggest that the requested variance would result in an increased or decreased safety of access.
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,**
Staff has no data to confirm the effects of flooding as a result of overland flooding or storm sewer overflows.
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.**

Costs associated with government services during or after flood conditions will not change due to this variance.

Since this is a variance request to Article 21-06 (Flood Plain Management) related to floodproof construction, the Zoning Administrator defers to the Building Official/Flood Plain Administrator as well as the City Engineer for current and future floodplain management. This application was reviewed by the City's Planning and Development, Engineering, and Building Inspections Departments ("staff"), whose comments are included in this report.

The submitted proposal from the design engineer and the developer, identify that the proposed building will be used for storage and garage space, for its near term use, by the surrounding existing structures. The water and sanitary utilities installed into the building during construction are not allowed to be connected until a future date once the Fargo-Moorhead Area Diversion Project has been completed and the area has been removed from the FEMA floodplain or the City of Fargo Floodplain Policy requirements are amended. Applicant will not be allowed to connect these utilities without prior notice and approval from the City.

Staff finds that the proposed variance would violate elevation standards established by the City of Fargo, specifically the Special Flood Hazard Area (1% chance floodplain) established by FEMA and Fargo's 2-foot minimum freeboard requirement. The City of Fargo has worked with FEMA to secure an exemption to federal standards in order to allow the construction of basements when properly floodproofed. While the option for variance exists to provide relief from floodproofing requirements in situations resulting in hardship, the City has been warned by FEMA that misuse of the variance provision could result in a loss of the current city-wide basement exemption that FEMA has granted the City of Fargo. For this request though, Staff feels that it will not affect the City of Fargo's basement exemption due to the minimal variance required and the proposed use of the structure.

Ultimately, staff is in support this request for a variance. This support is due to the proposed use of the structure as well as the elevating of it to be 1 foot above the FEMA BFE, which meets the state of North Dakota requirements.

Staff recommends that any granting of a variance be conditioned upon the applicant agreeing to a waiver of liability against the City. Engineering staff would work with the City Attorney's Office to draft an acknowledgment form that would outline the owner's decision to not follow the City's floodproof construction requirements. The purpose of this document would be to provide additional protection to the City from unforeseen issues that may arise as a result of the variance.

Staff Recommendation: "To accept the findings of staff and hereby approve the requested variance on the basis that the review considerations of Section 21-0603 have been satisfied, with the condition that the applicant sign and submit a waiver of liability against the City."



Subject Property

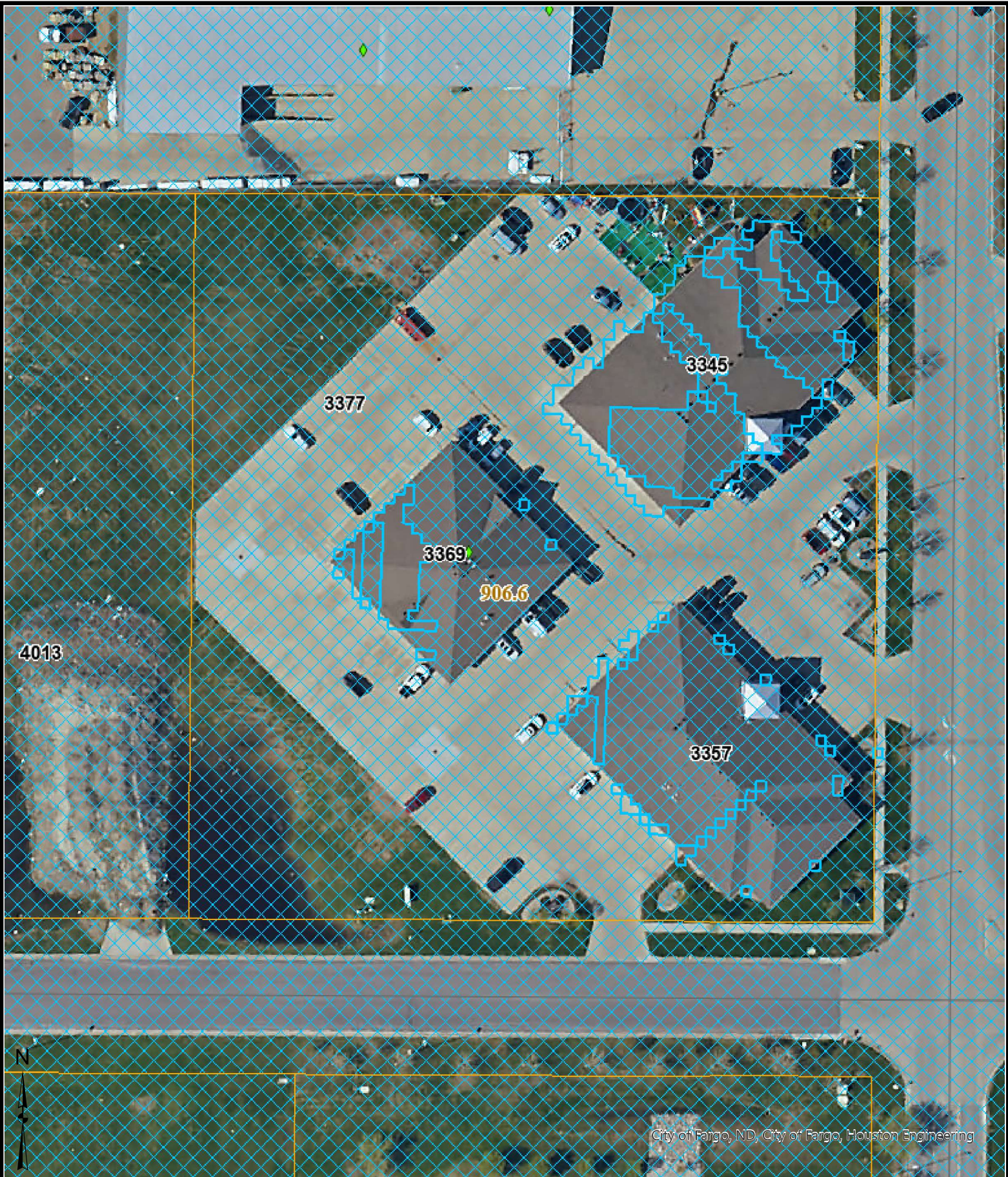
39 ST S

34 AVE S

41 ST S







These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

3377 39 St S (41' WSEIA)

1:1,128

12/22/2023 3:35 PM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.





PLANNING AND DEVELOPMENT
 200 Third Street North
 Fargo, North Dakota 58102
 Phone: (701) 241-1474
 Fax: (701) 241-1526
 E-Mail: planning@cityoffargo.com
www.cityoffargo.com

FLOOD PLAIN MANAGEMENT VARIANCE APPLICATION (§21-0603)

The Board of Adjustment is authorized to grant variances from the Flood Plain Management requirements of Article 21-06 of the Fargo Municipal Code, pursuant to the considerations and standards of Section 21-0603.

Please contact the Fargo Department of Planning and Development to schedule a pre-application meeting prior to submitting this application.

The following must accompany this application form:

- a. Site plan illustrating existing and proposed buildings, property lines, and other applicable information relevant to the requested variance.
- b. Building plans illustrating information relevant to the requested variance.
- c. Application fee.

Property Owner Information	
Name (printed):	<u>Michael Casper</u>
	<u>Prairie Commons Partners, LLC</u>
Address:	<u>1650 45 ST STE 120</u>
Primary Phone:	_____
Alternative Phone:	_____
Email:	_____

Representation Information (primary contact)	
Name (printed):	<u>Andrew Thill, PE</u>
Company	<u>Lowry Engineering</u>
Address:	<u>5306 51 AVE S STE A</u>
Primary Phone:	_____
Alternative Phone:	_____
Fax:	_____
Email:	_____
<input type="checkbox"/> Same as property owner	

Location of property for which variance is being requested:	
Address:	<u>3337 39 ST S</u>
Zoning District:	<u>LI Limited Industrial</u>
Legal Description:	<u>PID: 01-5530-00102-000</u>

Acknowledgement – I hereby acknowledge that I have familiarized myself with the rules and regulations to the preparation of this submittal and that the foregoing information is true and complete to the best of my knowledge. I, the undersigned, do hereby petition the Board of Adjustment of the City of Fargo, North Dakota, to take such action as may be required by law of the City of Fargo to grant a variance pursuant to Section 21-0603 of the Fargo Municipal Code.

Owner (Signature):		Date:	<u>12/11/2023</u>
Representative (Signature):		Date:	<u>12/11/2023</u>

Note: A nonrefundable application fee of \$185.00 must be accompanied with the application at time of submittal.

Office Use Only		
Date Filed:	Planning Contact:	Nonrefundable Fee \$185.00: <u>ok #398</u>

RECEIVED
 12/18/2023

Lowry Engineering
 5306 51st Ave S
 Ste A
 Fargo, ND 58104

Proposed Variance Information:
(Attach additional pages, if needed)

Please list all Flood Plain Management standards for which you are seeking a variance (e.g. elevation of lowest opening, fill adjacent to building, floodproof construction standards).

Elevation of Lowest Opening

Please describe difference between the standard(s) and the proposed variation (e.g. The standard would require a lowest opening elevation of 901.5 ft. and my project would propose a lowest opening elevation of 900.7 ft.).

We are requesting that this detached, non-primary slab on grade structure be allowed to match the height requirements of residential non-primary, slab on grade structures which is 1' above BFE. Current BFE is 905.70 and we are requesting a lowest opening of 906.70.

Please explain your project, describing why you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions.

Due to the uniqueness of the site and existing grades the planned second phase of this development cannot happen without this variance to more closely match the existing building grade. By reducing the minimum BFE height we would be more in line with the adjacent properties and by such not adversely affect their buildings, lots or setbacks. Without this reduction no usable structure could be built on these remaining spaces for phase 2. These buildings will be on the back and less traveled sides of the parcel, therefore, not impacting health, public safety or the general welfare of others. The building type to be used is similar to other structures built in the area. Additional garage and storage space is needed for the existing tenants. The existing site was designed and built prior to the current flood code. Current buildings are at +/- 906.70 and current drive lanes and site improvements are set up to support buildings at this elevation. Proposed site layouts and proposed grading plan is included in the attached exhibits.

Please explain how failure to grant the variance would result in exceptional hardship.

The hardship is due to a need for garage and storage space by current tenants. These building were built with the intention of expansion in the future. The owner could not have anticipated new flood proof construction codes after they built out the first phase. We have explored other options to make this meet current code and ultimately there is no other way to make the site work regardless of the amount of money spent on it. It is virtually impossible to raise existing structure and make the slopes meet ADA code. Furthermore, the needed slopes would make traversing the existing site difficult and result in grades up to the new garages that would not be feasible.

Considerations for Approval:

Please explain how your requested variance satisfies the following considerations, pursuant to Section 21-0603 of the Fargo Municipal Code: (Attach additional pages, if needed.)

- a. The danger that materials may be swept onto other lands to the injury of others;

The items store in these units would not be much different that those stored in a non-primary residential structure or those stored in the adjacent, existing structures already on this site. This has been determined by the City to not be a concern for residential non-primary structures and likewise should not be a concern here.

- b. The danger to life and property due to flooding or erosion damage;

No one will be permanently housed or have offices here, this is simply storage and garage space. Fill around the structure will be placed to meet Fargo Dike and Levee specifications which should alleviate erosion issues.

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

It would be made very clear to any users of the facility of the very low risk of a flooding scenario that might exist with this structure. Flooding events in the valley happen generally with notice and relatively slowly. There would likely be adequate time for a user to react.

- d. The importance of the services provided by the proposed facility to the community;

The addition of two proposed garage structures benefits the existing tenants and their growing businesses. By adding these structures the business get storage space they need without the cost and negative issues that come with moving locations. Also, there is a great need for businesses to have both a presentable office such as found in similar office parks with storage for materials and trailers indoors to avoid exterior clutter and blight.

- e. The necessity to the facility of a waterfront location, where applicable;

Not Applicable.

- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

The tenants need this garage and storage space in fairly close proximity to their existing locations.

- g. The compatibility of the proposed use with the existing and anticipated development;

There is good compatibility as this proposed structure is being built to serve the existing users of the facility. The surrounding area includes similar structures and uses

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

The proposed use would generally fit with other uses in the area and would be at an elevation consistent with the other 3 buildings on the site. For this reason, it would be assumed that it would fit with the current floodplain management program for that area.


- i. The safety of access to the property in times of flood for ordinary and emergency vehicles; Nothing is changing as far as site access. The site is existing and access will remain the same it is today.

- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

This should be non-applicable at this location. This is a considerable distance from the flood way and would be impacted only by overland flooding which should have very limited risk of the above mentioned concerns.

- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.

These items would be the same cost regardless of the height of the building. Nothing regarding public infrastructure would be changing.

LANDSCAPING LEGEND			
SYMBOL	TYPE OF PLANT MATERIAL	PLANTING SIZE	PLANT # PLANTS UNITS PER EACH
	LARGE DECIDUOUS TREE	1.5 TO 3" DBH CALIPER - > 20' FOOT MATURE HEIGHT	10
	SMALL TREE	1.5 TO 3" DBH CALIPER - > 10' FOOT MATURE HEIGHT	10

LANDSCAPING REQUIREMENTS			
OPEN SPACE REQUIREMENTS		PROPOSED	
CITY REQUIREMENTS	13 EX. TREES / 105 - 134 UNITS	13 EX. TREES / 105 - 134 UNITS	
1 PLANT UNITS PER 1,000 SF	133,933 SF / 1,000 = 134 UNITS	4 EX. SHRUBS / 2 PLANTS	
		151 TOTAL PLANTING UNITS	
STREET TREE REQUIREMENTS		PROVIDED	
CITY REQUIREMENTS	REQUIRED MET BY EX. TREES	N/A	
1 TREE / 50 LF (9TH ST - COLLECTOR ST)	356 LF / 35 = 10 TREES	10 TREES	
1 TREE / 35 LF (8TH AVE SW - LOCAL ST)	356 LF / 35 = 10 TREES	10 TREES	

- LANDSCAPING NOTES:**
- AT THE TIME OF PLANTING TREES SHALL HAVE A MIN. OF 2" GAUPEL TRUNK.
 - ALL STREET TREES SHALL HAVE A MINIMUM 3" RADIUS MULCH RINGS INSTALLED AT THE TIME OF PLANTING.
 - CONTRACTOR SHALL PROVIDE A YEAR WARRANTY ON ALL LANDSCAPE MATERIAL TO INCLUDE WORKMANSHIP FOR INSTALLATION FROM DATE OF FINAL ACCEPTANCE.
 - CONTRACTOR SHALL COORDINATE WITH MECHANICAL REGARDING LANDSCAPING IN AND AROUND AIR INTAKE OR EXHAUST UNITS.
 - CONTRACTOR TO ALLOW 5' CLEARANCE FROM UNDERGROUND UTILITY PIPING TO PLANTINGS.
 - ALL TREES SHALL BE APPROVED BY CITY FORESTER PRIOR TO INSTALLATION.



BENCHMARK #1:
TOP OF EX. HYDRANT LOCATED SOUTH OF THE SITE & ALONG THE NORTH SIDE OF 34TH AVENUE SW (NAD83)
ELEVATION = 506.55 (NAD83)

BENCHMARK #2:
TOP OF EX. HYDRANT LOCATED SOUTHWEST OF THE SITE & ALONG THE NORTH SIDE OF 34TH AVENUE SOUTHWEST.
ELEVATION = 506.01 (NAD83)

BASES OF BEARINGS: CITY OF FARGO COORDINATE SYSTEM, US SURVEY FEET.

REVISION: 02 - 11-27-23
ADDED LANDSCAPE PLAN SHEET PER THE CITY PLANNING COMMENTS.

NO.	DATE	DESCRIPTION
1	11/27/23	CITY PLANNING COMMENTS

PRAIRIE COMMONS SHOPS
3357 39TH STREET SOUTH
FARGO, ND 58104



PL-1028-B
PROJECT DATE: 11/07/2023
CHECKED BY: DMW
DRAWN BY: DMW
APPROVED BY: AIT

LANDSCAPE PLAN

L-1

CALL BEFORE YOU DIG
NORTH DAKOTA
UTILITIES UNDERGROUND LOCATION SERVICE
1-800-794-6555

