

BOARD OF ADJUSTMENT Thursday, January 5, 2023 | 8:00AM City Commission Chambers AGENDA

- 1. Approve Minutes September 27, 2022
- 2. New Business
 - a. Variance Request 502 1st Avenue 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. 2023 Meeting Dates
- 4. Other Business
- 5. Adjourn Next Meeting: January 24, 2023

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

BOARD OF ADJUSTMENT MINUTES

Regular Meeting:

Tuesday, September 27, 2022

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, September 27, 2022.

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.

Chair Love noted that four members of the Board of Adjustment would be required to reverse the decision of the administrative official for Item 2a. The appellant was asked if they would like to proceed, and the appellant accepted to proceed with four members present of the Board.

Item 1: Approval of Minutes: Regular Meeting of July 26, 2022

Member Boreen moved the minutes of the July 26, 2022 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. Appeal of Administrative Decision

Appellant claims staff erred in its determination to deny the Change of Use Permit application from Gill Investments LTD, filed August 15, 2022 basing the determination that the proposed Use does not meet the Downtown Mixed Use Zoning Use Regulations as defined by the Land Development Code, Article 20-04 (20-0401 Use Table).

Planning Coordinator Kim Citrowske presented an overview on the background regarding staff's decision to deny the applicant's request. She explained the Relevant Code Provisions supporting staff's decision, and referred to the section of the Land Development Code included in the packet. Ms. Citrowske stated the applicant feels staff erred in their decision and is bringing the appeal before the Board of Adjustment for a ruling.

Appellant and applicant representative Matt Hoffer, Romantix, Inc., spoke on behalf of the appeal.

Discussion was held on the difference between adult uses and retail sales and services, and the definition of adult bookstore.

Member Wendel-Daub present.

Ms. Citrowske and appellant Mr. Hoffart presented their presentations once more.

Discussion continued on the products to be sold, sidewalk visibility into the store, the definition of adult uses and stock and trade, and the Boards role in reviewing this appeal.

Planning and Development Director Nicole Crutchfield spoke on the 2019 zoning compliance letter for a different site and that interpretations are specific to sites.

Mr. Hoffer further spoke on the definition of adult bookstore and stock and trade.

City Attorney Nancy Morris spoke on the position of the City Attorney's office.

Further discussion was held on the online description of the Romantix store, the intent of the store, and zoning enforcement.

Member Wendel-Daub moved to affirm staff's decision to deny the Change of Use Permit application from Gill Investments LTD, filed August 15, 2022 basing the determination that the proposed Use does not meet the Downtown Mixed Use Zoning Use Regulations as defined by the Land Development Code, Article 20-04 (20-0401 Use Table). Second by Member Orth.

Discussion continued on what the authority is, and where it lies to define adult uses.

Ms. Crutchfield stated that adult uses are not allowed in the DMU, Downtown Mixed-Use zoning district and the planning departments review.

Member Heller further inquired on the definition of adult bookstore and the products that would define that use.

Upon call of the roll Members Wendel-Daub, Boreen, Orth, and Love voted aye. Member Heller voted nay. The motion was declared carried.

Item 3: Other Business

No other business was presented.

Item 4: Adjournment: Next Meeting: October 25, 2022

Member Orth moved to adjourn the meeting at 10:13 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	

Variance Staff Report			
Item No: 2.a			Date: January 5, 2023
Address: 502 1 st Avenue	e South		
Legal Description: Bloc	ks 19 & 20 and vacated 6 th Str	reet South (between 1 st	
Ave S and 2 nd Ave S) & 2	2 nd Avenue South (between 7 th	^h St S and vacated 5 th	
St S) & all vacated alleys	within Block 19 & 20; Origin	nal Townsite	
Owner(s)/Applicants: Fa	argo Park District/Tony Eukel	(MBN Engineering)	
continue at a lower elevat	o construct new pool facilities tion than would otherwise be		0
Zoning District: P/I: Pu	blic / Institutional		
Status: Board of Adjustn	nent Public Hearing: January :	5, 2023	
Floodproofing	~ . ~		
rioonhioonnis	g Code Standards	Prop	osed Structure
Elevations:	g Code Standards	Prop Elevations:	osed Structure
	g Code Standards FEMA BFE plus 2'		osed Structure Protected by certified Levee
Elevations:		Elevations: Lowest opening:	
Elevations: Lowest opening:	FEMA BFE plus 2'	Elevations: Lowest opening: 885.4 Adjacent fill:	Protected by certified Levee

Background:

The applicant has proposed to construct new pool facilities and the remodel/rehabilitation of the existing structure. The existing building has a lowest opening (finished floor) below the requirements of the City's Floodproofing Code. The existing building and proposed pool improvements are within the 41-foot water surface elevation inundation area (WSEIA). At this location, the 41-foot WSEIA is at an elevation of 903.9 feet with additive. This area is protected by a certified levee which removes the requirements of the standard FEMA base flood elevation requirement. The proposed new improvements must meet the Floodproofing Code requirements described as follows:

1. The finish floor elevation for the 41' WSEIA is 902.7' plus 1.2' = 903.9' without an approved flood proofing variance.

According to the applicant, the proposed variance is necessary to allow continued use of the existing pool house and allow the same finished floor elevation as the existing building, which was constructed prior to the City's current floodproofing elevation requirements. Through design, these new improvements should limit damage through the elevation of auxiliary and electrical components to the greatest extent possible and by specifying floodable materials as a requirement in the approved stamped construction plans. Additional details are provided by the applicant within the attached application materials. A list of materials and installation locations will be provided by the applicant for review by the Building Official/Flood Plain Manager for compliance in regards to the minimization of extreme flood or internal city rainfall events which exceed the storm sewer storage and capacity.

Codes Background:

The rationale behind the development of the City's 41-foot WSEIA is in anticipation for future increases to the FEMA Special Flood Hazard Area (1% annual chance/100-year flood plain). While mapping flood

elevations as part of the FM Diversion Feasibility Study, it was found by the Army Corps of Engineers that the hydrology used by FEMA to establish the Special Flood Hazard Area was obsolete. It was based on a study that did not include in the period of record for the Red River events after 1979. It is the practice of FEMA to review communities every 5 years to determine if a new map is warranted. Based on information contained in the FM Diversion Feasibility Study of Fargo which accounts for recent flood events, including the flood of record in 2009, the information on updated hydrology and hydraulics is readily available and FEMA will have cause to remap Fargo. When this update occurs, it is anticipated FEMA will raise the elevation of the Special Flood Hazard Area, resulting in additional areas of the City being located within this flood plain and subject to additional flood insurance requirements or increases. As such, the purpose of the 41-foot WSEIA is to prevent non-floodproof construction within areas that will potentially be located within Special Flood Hazard Area in the future.

The determination was made during the development of the 41' WSEIA that additions to existing structures would only be required to adhere to the FEMA elevation requirements if the existing structure and/or the proposed addition is within the FEMA 1% chance flood zone. If the structure and addition are only identified in the 41' WESIA area, the addition may match the finish floor elevation of the original structure.

Another caveat of floodproofing and protection has to do with localized flooding versus flooding from the Red River. Many areas of the City are at risk of flooding due to the stormwater infrastructure not being able to handle significant rainfall events. In this aspect the City's floodproofing requirements and policies are intended for emergency protection from both the Red River and from overland flooding or storm sewer overflows.

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 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 improvements would not be important to the critical stability of the city infrastructure.
- **e.** The necessity to the facility of a waterfront location, where applicable; Not applicable. The proposed improvement 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;

There are vacant properties outside of the 41-foot WSEIA and 100-year floodplain, but an alternative location would not allow for continued use of the pool house for this downtown park amenity.

g. The compatibility of the proposed use with the existing and anticipated development; The use is compatible with existing and anticipated development at this location.

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 questionable as servicing roadways may become inundated during storm sewer overflows 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 the adopted flood proofing construction elevation requirements, 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.

Staff finds that the proposed variance is unique in that the proposed variance would violate elevation standards established by the City of Fargo, specifically the 41' inundation elevation requirement, but due to the location and the existing facility usage, it wouldn't affect the city's basement exemption status.

Ultimately, staff is in support of this requested variance. 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 to the extent possible, with the condition that the applicant sign and submit a waiver of liability against the City."

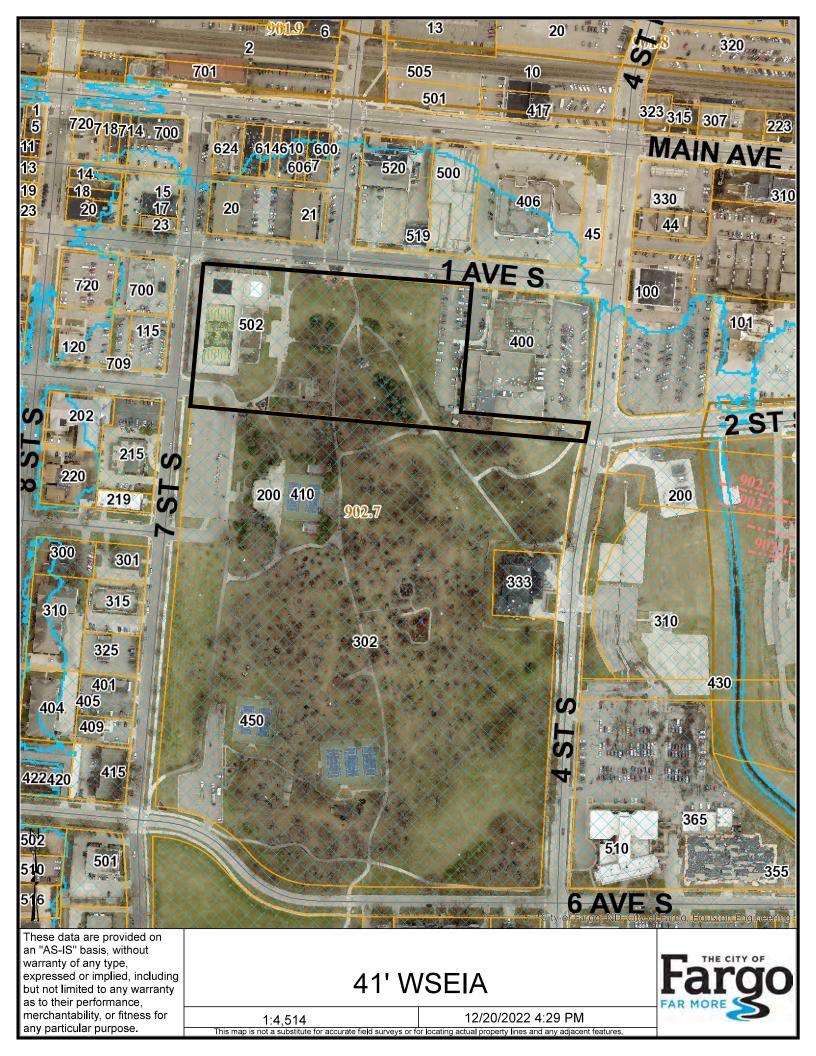


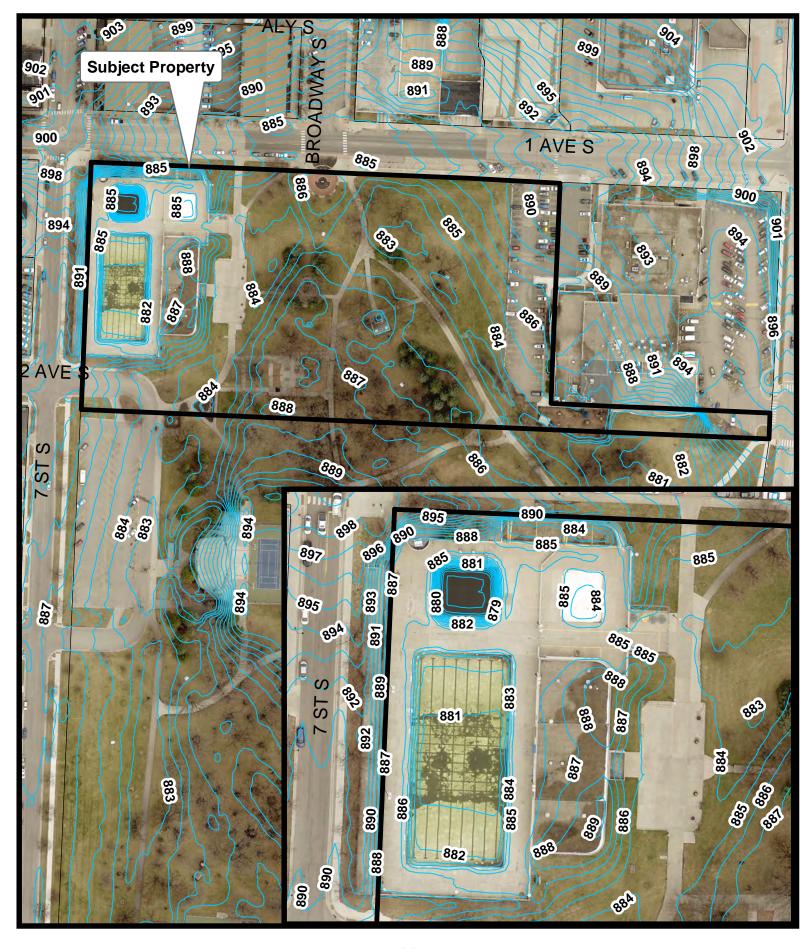


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Planning & Development 225 4th Street North Fargo, ND 58102 Office: 701.241.1474 | Fax: 701.241.1526 Email: Planning@FargoND.gov www.FargoND.gov

VARIANCES (§20-0914)

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of the Land Development Code (LDC) that will not be contrary to the public interest or the spirit of the LDC, where owing to special conditions, a literal enforcement of the provisions of this LDC would result in <u>unnecessary physical (not economic) hardship</u> to the property owner.

Variance Application Process

- 1) The application and a nonrefundable fee of \$185 are due at the time of submittal
- Notice of the Public Hearing is mailed to property owners within 300 feet of the proposed site at least 15 days prior to the Hearing and published once a week for two consecutive weeks in the newspaper.
- The City Planner reviews your case, develops a staff report and prepares a recommendation to the Board of Adjustment based on the Criteria for Approval, below.
- 4) Board of Adjustment meetings are scheduled as needed.

Criteria for Approval

A variance may be granted by the Board of Adjustment upon an affirmative finding that <u>all</u> of the following conditions exist.

- a. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;
- b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- c. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;
- d. The variance desired will not adversely affect the public health, safety or general welfare; and;
- e. The variance is the minimum variance that will overcome the hardship.

preparation of this I, the undersigned, action as may be re	submittal and that the foregoing informa do hereby petition the Board of Adjust	imiliarized myself with the rules and regulations to the tion is true and complete to the best of my knowledge. ment of the City of Fargo, North Dakota, to take such int a variance pursuant to Section 20-0914 of the Land
Owner (Signature)	1.1	Date: 11-29-22
Note: A not	nrefundable filing fee of \$185.00 must be ac	companied with the application at time of submittal.
Office Use Only		
Date Filed:	Planning Contact	Nonrefundable Fee \$185.00;



APPLICATION FOR VARIANCE

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and offstreet parking and loading standards of the Land Development Code (LDC) that will not be contrary to the public interest or the spirit of the LDC, where owing to special conditions, a literal enforcement of the provisions of this LDC would result in <u>unnecessary physical (not economic) hardship</u> to the property owner.

Property Owner Information:	
Name (printed): Tyler Kirchner	
Address: 701 Main Ave, Fargo, N	D 58103
Primary Phone: (701) 551-5882	6
Alternative Phone: N/A	
Fax: N/A	
Email: TKirchner@FargoPark	s.com

Representation I	nformation: (if applicable)
Name (printed):	Fony Eukel
Address: 503 7th	St N #200, Fargo, ND 58102
Primary Phone:	(701) 478-6336
Alternative Phone	
Fax: N/A	
Email: Tony.E	ukel@mbnengr.com

Location of property requesting a variance:

Address: 616 1st Ave S, Fargo ND 58103

Zoning District: C - Commercial

Legal Description: 19 & 20, all of vac 6th St S & 2nd Ave S & all of vac alleys & W 1/2 of vac 5th St S

Proposed Variance Information:

What Land Development Code Standard are you seeking a variance? (e.g. setback, lot coverage, height) Flood Elevation

Please describe difference between the standard and the proposed (e.g. the standard is 10 ft. and my project would propose a 7' setback).

41' elevation = 903.90. Existing elevation of the pool house = 885.40. (18.5' below 41')

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. (Attach additional pages, if needed.)

The project is a remodel and upgrade to the Island Park pool area along with the remodel of the existing pool house and arena shell. The reason for the elevation variance request is that the ordinance requires that we meet the minimum 41' elevation (903.90) for structures in this area and with the existing elevation of the pool house (885.40, 18.5' below 41') we are not able to meet this requirement. See attached drawings.



Criteria for Approval:

Please explain how your requested variance meets the following five criteria for approval, pursuant to Section 20-0914 of the Land Development Code: (Attach additional pages, if needed.)

1. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;

The minimum 41' elevation (903.90) for structures in this area and with the existing elevation of the pool house (885.40, 18.5' below 41') we are not able to meet this requirement.

The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

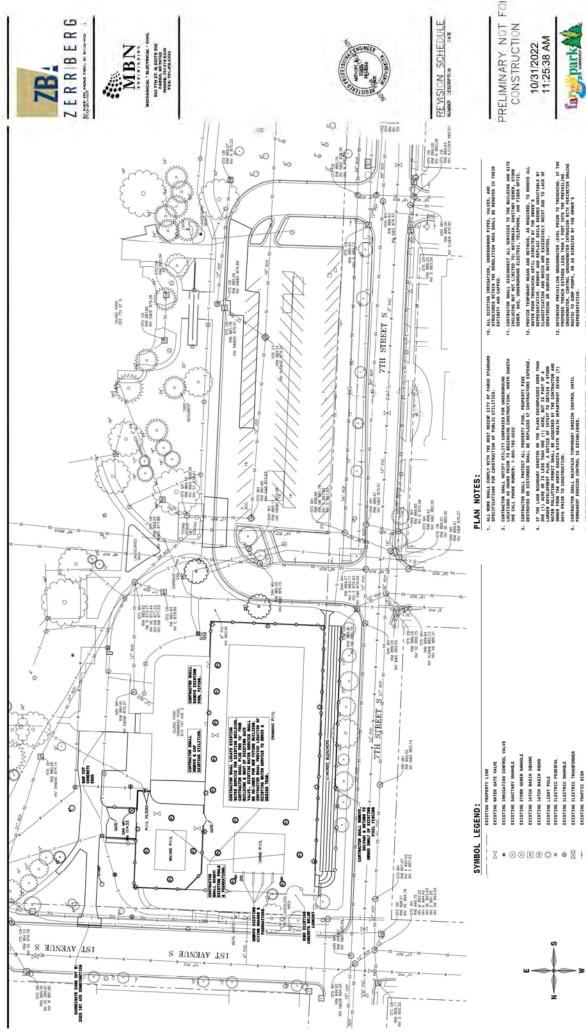
No. We are requesting a variance to only the 41' elevation requirement in order to reuse the existing pool house structure. It will not be feasible to design/construction a new pool house that would be raised 18.5' above existing grade.

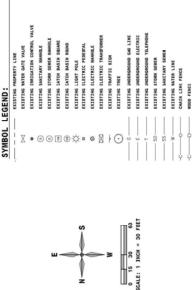
3. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

Yes, the 41' elevation requirement is not practical in this application and will would not allow the Park District to reuse/remodel the existing structure.

4. The variance desired will not adversely affect the public health, safety, or general welfare; and No, the existing structure would be remodeled and reused to meet the current codes and ordinances for a pool house. The finished floor elevation would not pose an adverse affect to public health and safety.

The variance is the minimum variance that will overcome the hardship.
 Yes. It is requested that the existing floor elevation of 885.40 be maintained without modification.





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FARGO PARK DISTRICT ISLAND PARK POOL FARGO PARK DISTRICT

15. ALL PAVEMENT MARKED FOR DEMOLITION SHALL BE FULL DEPTH SAW CUT PRIOR TO REMOVAL.

14. IF A STREETLIGHT REGUIRES TEMPORALY ON PENMANENT CONTACT DAVE HELLAND AT (701)241-1557

RELOCATION

SITE/DEMOLITION PLAN

3 21-342

Project No.

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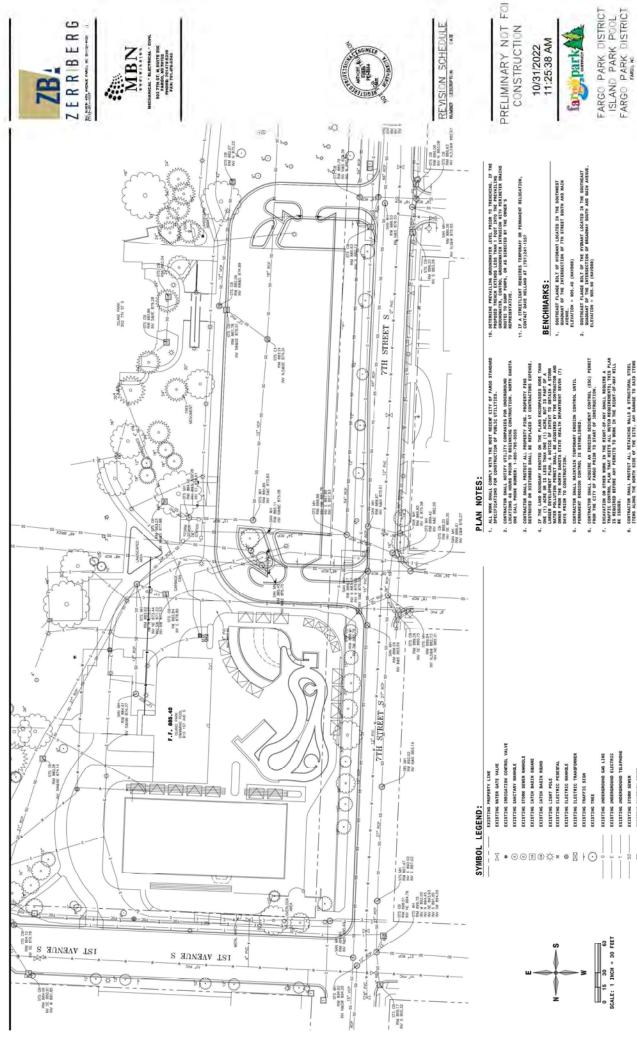
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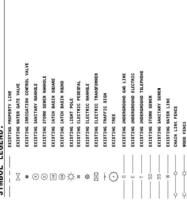
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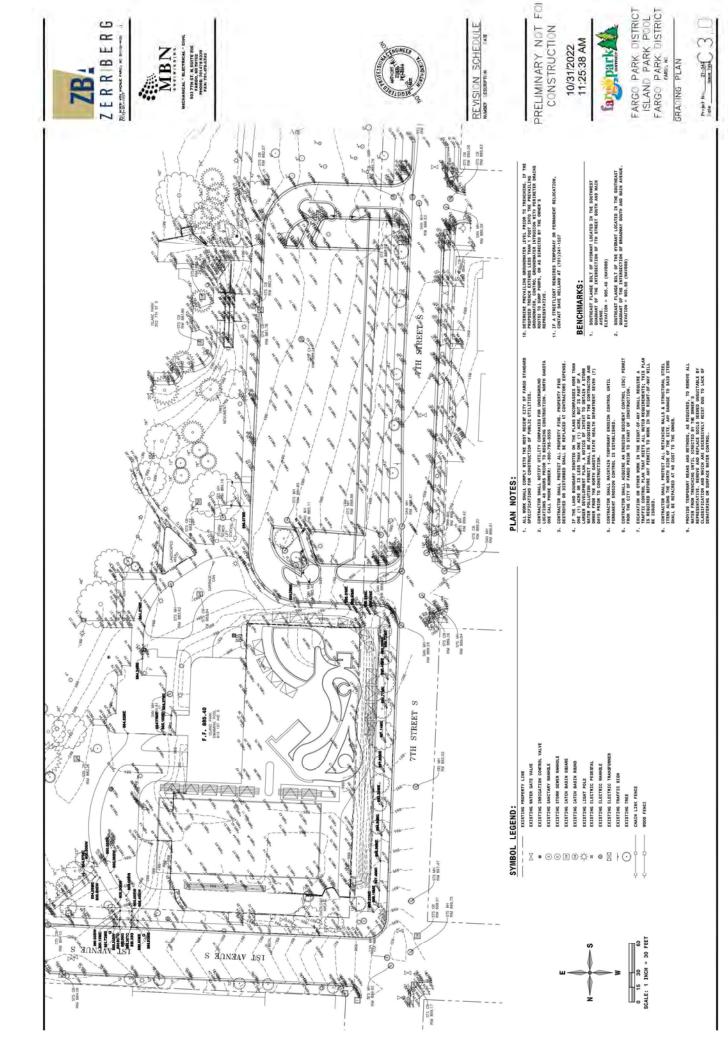
EROSION CONTROL UTILITY PLAN

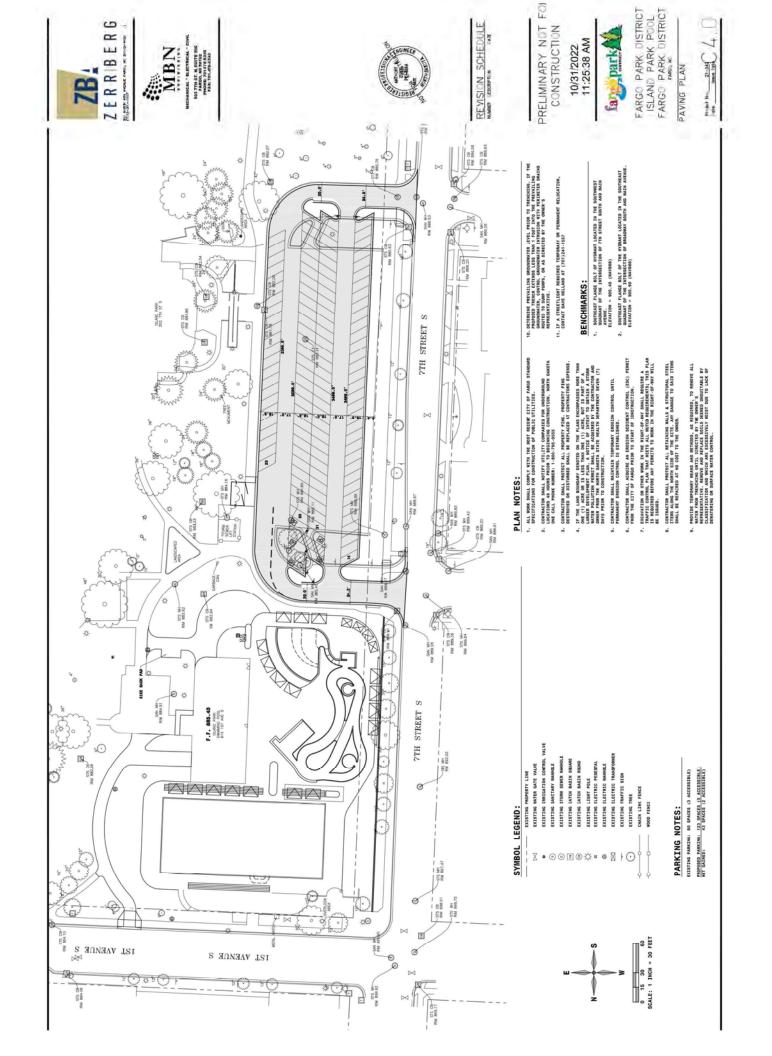
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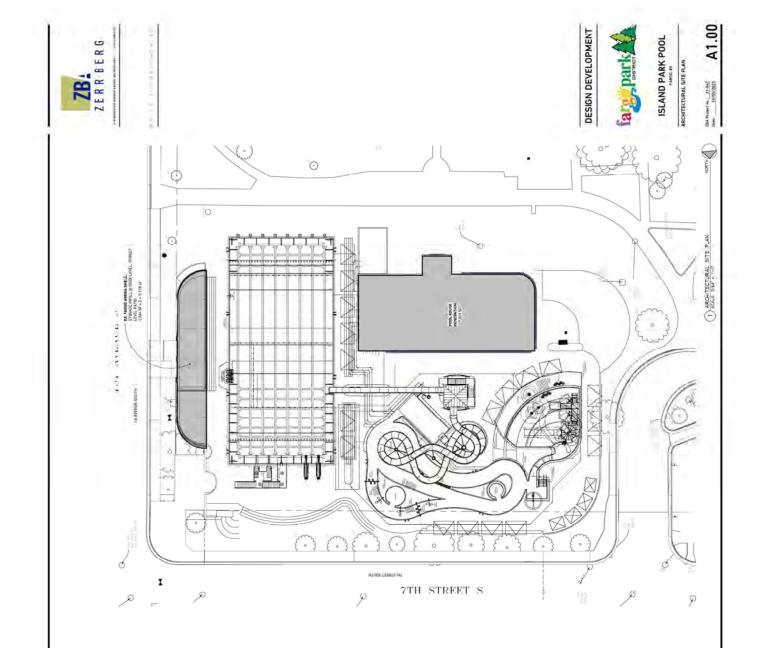
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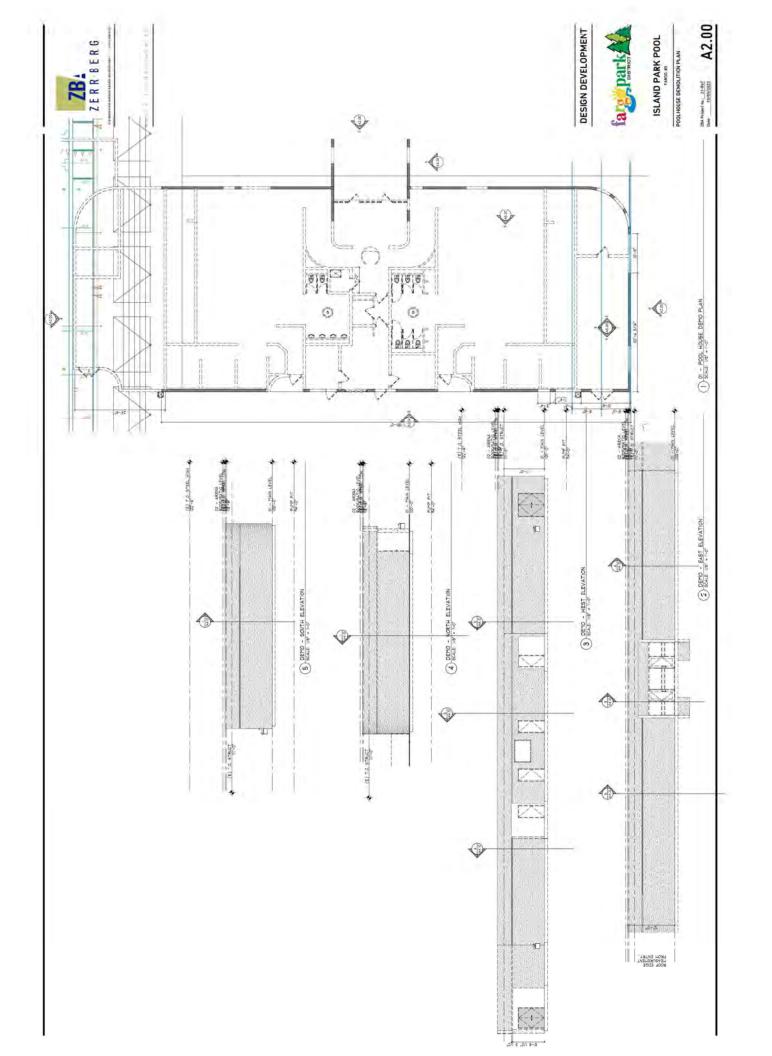
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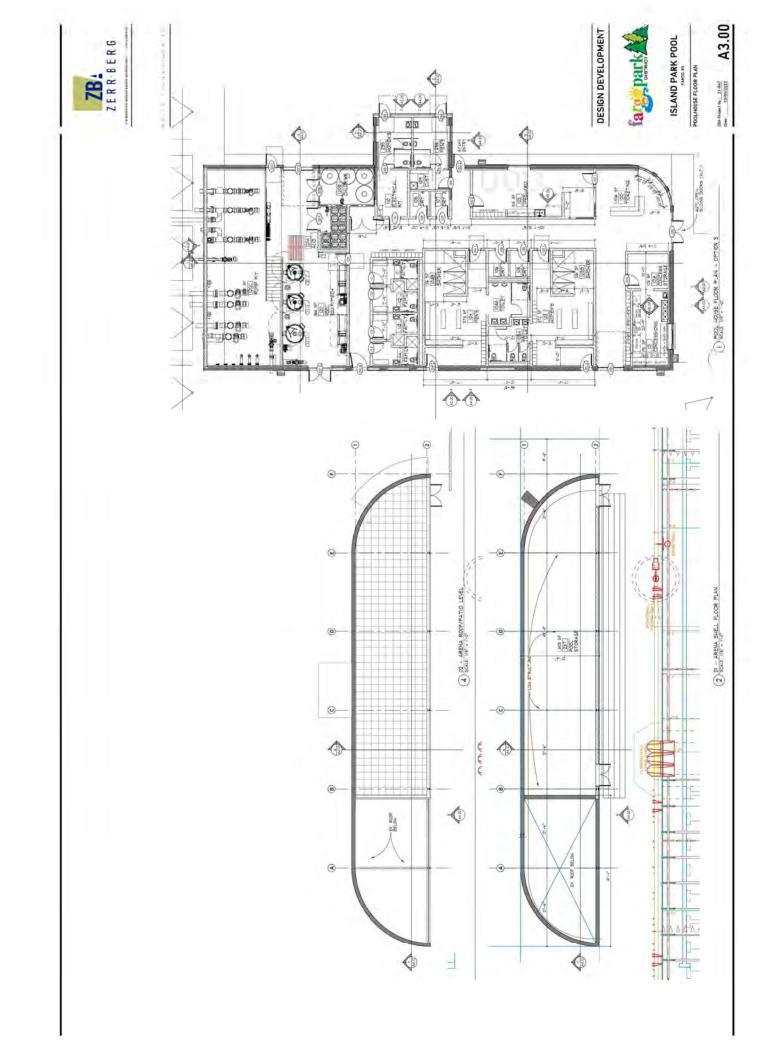
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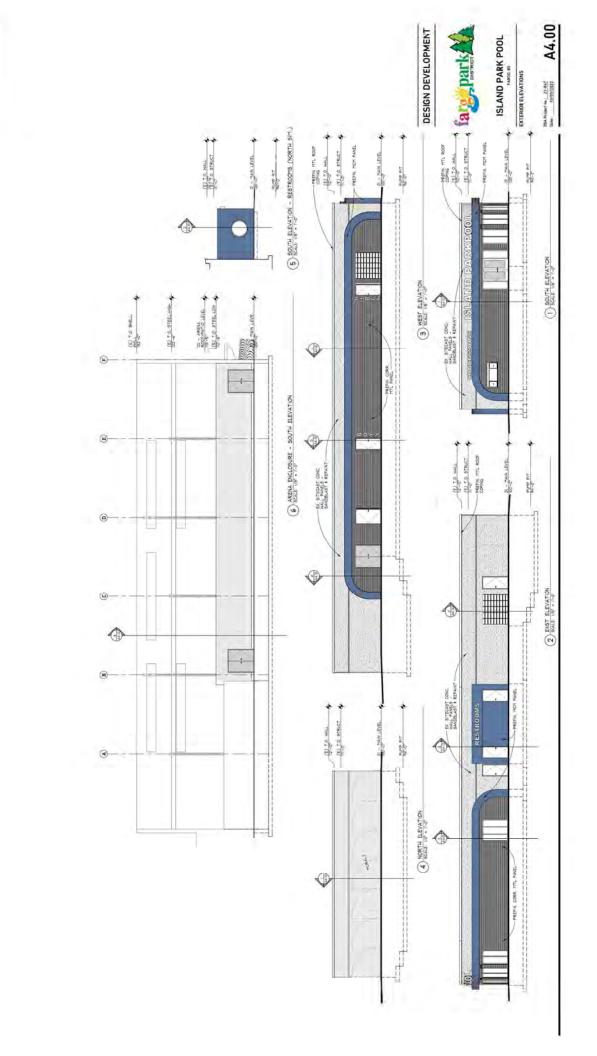






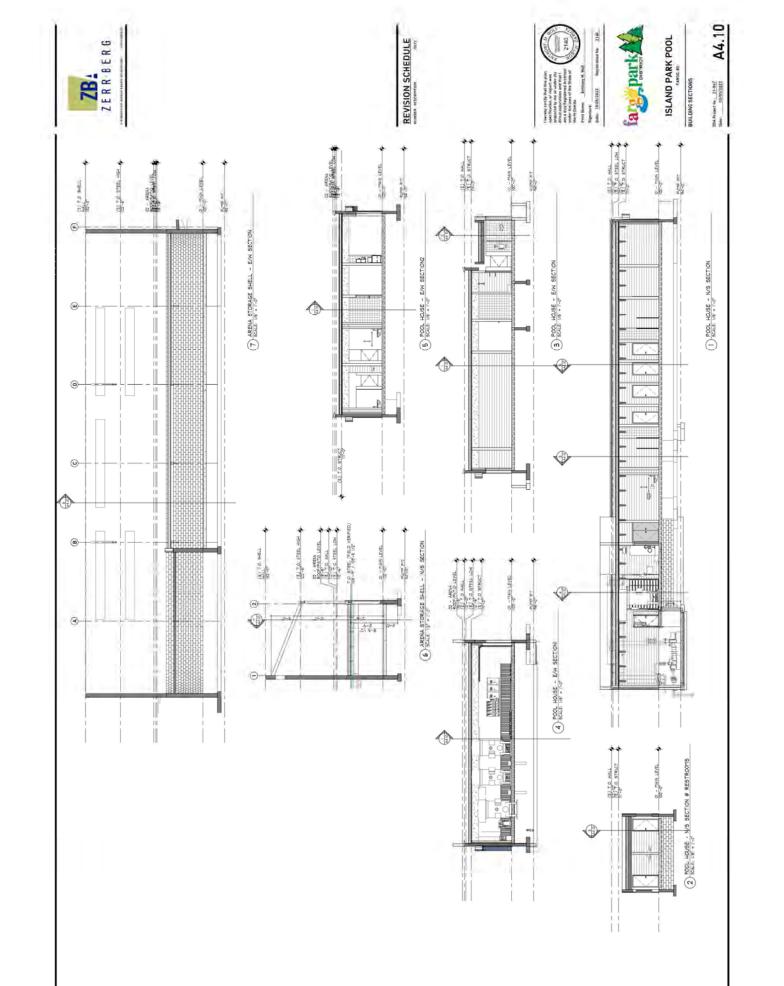
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Planning & Development 225 4th Street North Fargo, ND 58102 Office: 701.241.1474 | Fax: 701.241.1526 Email: planning@FargoND.gov WWW.FargoND.gov

MEMORANDUM

TO: ALL DEPARTMENTS

FROM: ALBERT GIBSON, PLANNING AND DEVELOPMENT DEPARTMENT

DATE: DECMEBER 20, 2022

SUBJECT: 2023 BOARD OF ADJUSTMENT MEETING SCHEDULE

Listed below are the Board of Adjustment meeting dates for the calendar year 2023.

В	oard of Adjustment Meetings
	January 24
	February 28
	March 28
	April 25
Same State	May 23
	June 27
	July 25
	August 22
	September 26
	October 24
	November 28
	*December 19
* Date	change due to the Christmas Holiday.
4th Tue	of Adjustment meetings will be held the sday of each month at 9:00 a.m. in the ommission Chambers at City Hall.

2023 Meeting Schedule

