

MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planning Coordinator
DATE: April 11, 2019
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, April 23, at 9:00 a.m. in the Commission Chambers at the **NEW** Fargo City Hall. If you are not able to attend, please contact staff at (701) 241-1474 or planning@FargoND.gov. Thank you.

BOARD OF ADJUSTMENT
Tuesday, April 23, 2019 9:00 a.m.
Commission Chambers
AGENDA

1. Approve Minutes of June 26, 2018 Meeting
2. New Business
 - a) Variance Request – 5407 88th Avenue South
Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow an existing accessory structure to exceed the maximum allowable accessory building height within the SR-1, Single-Dwelling Residential, zoning district.
3. Other Business
 - a) Annual Nomination and Election of Officers
 - Chairperson
 - Vice-Chairperson
 - b) Discussion on Process for Future Elections
4. Adjournment

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, June 26, 2018

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 9:00 o'clock a.m., Tuesday, June 26, 2018.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Russell Ford-Dunker, Michael Love, Mark Lundberg,
Mike Mitchell

Absent: Matthew Boreen

Chair Love called the meeting to order.

Item 1a: Approval of Minutes: Regular Meeting of February 27, 2018

Member Wendel-Daub moved the minutes of the February 27, 2018 Board of Adjustment meeting be approved. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

Item 1b: Approve Order of Agenda

Member Ford-Dunker moved the Order of Agenda be approved as presented. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a) Variance Request – 1620-1632 1st Avenue North: APPROVED

Request for a variance of Section 20-0502 of the Land Development Code. The requested variance is to allow for the location of a prefabricated building that would encroach into the required rear setback area within the GC, General Commercial Zoning District.

Assistant Planner Barrett Voigt presented the staff report and reviewed the criteria used during staff's analysis of the request. Mr. Voigt stated staff is recommending denial as the review criteria (a) and (c) have not been met.

Applicant Kevin Bartram, MBA Investments, spoke on behalf of the proposal.

Discussion was held regarding the proposal, alternative options, maintaining Fire Department access, and intended use of the site.

Planning Coordinator Aaron Nelson provided information regarding the existing and proposed Conditional Use Permits on the site.

Motion #1: Member Mitchell moved the findings of staff be accepted and the variance be denied as requested. Second by Member Wendel-Daub. Upon call of the roll Member Love voted aye. Members Wendel-Daub, Lundberg, Ford-Dunker, and Mitchell voted nay. The motion failed for the lack of a majority.

Motion #2: Member Wendel-Daub moved to approve the requested variance to allow for the location of a prefabricated building to encroach into the required rear setback area within the GC, General Commercial Zoning District on the basis that the review criteria have been met. Second by Member Mitchell. Upon call of the roll Members Wendel-Daub, Lundberg, Ford-Dunker, and Mitchell voted aye. Member Love voted nay. The motion was declared carried.

Item 3: Adjournment:

Member Ford-Dunker moved to adjourn the meeting at 9:28 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: April 11, 2019
Address: 5407 88 th Avenue South	
Legal Description: Lots 1 & 2, Block 1, Trottier Subdivision	
Owner(s)/Applicants: Kurtis Hansey	
Reason For Request: To allow a pole barn to exceed the maximum allowable accessory building height.	
Zoning District: SR-1, Single Dwelling Residential	
Status: Board of Adjustment Public Hearing: April 23, 2019	

SR-1 Accessory Structure Standards		Current Accessory Structure	
Rear Setback:	25'	Rear Setback:	100'+
Interior Side Setback:	15'	Interior Side Setback:	18'
Max. Accessory Building Height:	15'	Accessory Building Height:	16.5'

Background:

The applicant constructed a 3,360 square foot, 16.5-foot tall pole barn on the subject property in 2013 without obtaining a building permit. The subject property was, and currently is, within Fargo's extraterritorial jurisdiction and within the SR-1 (Single-Dwelling Residential) zoning district. Section 20-0403 of the Land Development Code limits accessory structures to a maximum building height of 15 feet within the SR-1 zoning district. As such, the pole barn exceeds the maximum allowable building height by about 1.5 feet, and is in violation of the Land Development Code. The applicant is requesting a variance in order to allow the pole barn to legally exceed the 15-foot maximum building height by 2 feet (measured building height of 16.5 feet plus 0.5 feet of wiggle-room).

Criteria for Approval & Staff Analysis:

§20-0914.E.1 of the LDC states that, "A variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions exist."

- a. The requested variance arises from conditions that are unique to the subject property not ordinarily found in the same zoning district and are not a result of the owner's intentional action;**
- Staff finds that the requested variance arises from conditions that are self-imposed by the applicant, and does not arise from conditions that are unique to the subject property. As noted in the submitted application, the applicant constructed the subject building in order to accommodate the storage of a camper. While the storage of campers and other large vehicles may be permitted as an accessory use to a residence, staff suggests that allowing the construction of large buildings in order to accommodate the storage of such vehicles is not consistent with the intent of the SR-1 zoning district. As stated within §20-0203 of the Land Development Code:

SR, Single-Dwelling zoning districts (SR-0, SR-1, SR-2, SR-3, SR-4, and SR-5) are intended to preserve land for housing and to provide housing opportunities for individual households. The regulations are intended to create, maintain and promote single-dwelling neighborhoods. The Single-Dwelling districts allow some other types of uses but not to the extent of sacrificing the overall image and character of Single-Dwelling neighborhoods. The regulations accommodate a variety of single-dwelling housing styles and residential densities. The dimensional standards allow for flexibility of development while maintaining compatibility within the City's various

neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

As noted by the applicant, the subject property is located within a rural area of Fargo's extraterritorial jurisdiction, as opposed to being located within the City. Staff would note that the desire to store a camper or to otherwise build a taller accessory structure is neither unique to the subject property nor to rural properties in general.

Additionally, while the SR-1 zoning district only exists in areas outside of the City's corporate limits (there are currently no areas within the City of Fargo within the SR-1 zoning district), the LDC restricts accessory buildings to a maximum of 15 feet in height. This is in contrast to the SR-0 and AG zoning districts, which both allow accessory structures to be a maximum of 35 feet in height. **(Criteria NOT satisfied)**

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

Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. As of the writing of the staff report, staff has not received any comments on this application. **(Criteria satisfied)**

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;

Staff finds that strict application of the applicable standards will not constitute an unnecessary physical hardship because the property can be used for an otherwise allowed use without coming into conflict with applicable site development standards. The primary use of the subject property is for residential household living. The indoor storage of campers and other large vehicles is accessory to the primary residential use of the property and is not required for the use and enjoyment of the property for residential household living. Additionally, staff suggests that there are alternative options available for the storage of campers that would not require the granting of a variance. **(Criteria NOT satisfied)**

d. The variance desired will not adversely affect the public health, safety or general welfare;

Staff has no data that would identify an adverse effect on public health, safety or general welfare. No public health, safety or general welfare issues have been identified. **(Criteria satisfied)**

e. The variance is the minimum variance that will overcome the hardship;

As mentioned above, staff suggests that there is no hardship because the accessory structure is not required for the use and enjoyment of the property for residential household living. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicants to construct the garage addition to the height proposed by the applicant. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow an accessory structure to exceed the maximum accessory building height in the SR-1 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met."





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 unnecessary physical (not economic) hardship to the property owner.

Variance Application Process

- 1) The application and a nonrefundable fee of \$185 are due at the time of submittal
- 2) 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.
- 3) 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 all 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.

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 20-0914 of the Land Development Code of the City of Fargo.

Owner (Signature): _____ Date: 2-27-19

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

Office Use Only

Date Filed: 2/27/19 Planning Contact: AN Nonrefundable Fee \$185.00: Visa Card

Kurtis L. Harney
5407 88th Ave. S.
Horace, ND 58047

APPLICATION FOR VARIANCE

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 **unnecessary physical (not economic) hardship** to the property owner.

Property Owner Information: Name (printed): <u>Kurtis Hansey</u> Address: <u>5407 88th Ave S</u> Primary Phone: <u>(701) 799-7511</u> Alternative Phone: <u>(701) 400-2326</u> Fax: _____ Email: <u>Kurt.Hansey@yahoo.com</u>	Representation Information: (if applicable) Name (printed): _____ Address: _____ Primary Phone: _____ Alternative Phone: _____ Fax: _____ Email: _____
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Location of property requesting a variance:
 Address: 5407 88th Ave S Horace
 Zoning District: SR-2
 Legal Description: Trotter Subdivision Lot 1 & 2
BLK 1 & 2

Proposed Variance Information:

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

Height of Building

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

Standard height is 15' my Building is 19'

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.)

I built a 42x80' pole barn on my property in 2013 to store a 30' 5" wheel camper. I was in need of a 14' Garage Door for the camper to fit in building. I live in the country and didn't think about a building permit at the time

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;

I believe my property is unique since I have a rural property with one neighbor within a mile. Compared to having a property in town.

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

Correct, I live in the country. The size of my building will not affect any of my neighbors.

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;

If my Building was built at the regulated height, I wouldn't be able to store my camper in the building. That is the building's main purpose.

4. The variance desired will not adversely affect the public health, safety, or general welfare; and

I believe my Building being 4' taller than regulated will not affect anybody's health or safety.

5. The variance is the minimum variance that will overcome the hardship.

The approval of the variance will help me overcome the hardship of obtaining my Building permit.



MEMORANDUM

TO: Fargo Board of Adjustment

FROM: Aaron Nelson, Planning Coordinator *AN*

DATE: April 11, 2019

SUBJECT: Items 3.a & 3.b – Annual Election of Officers and Discussion on Process for Future Elections

According to the Bylaws of the Board of Adjustment, *"At the regular annual meeting on the fourth Tuesday of July of each year, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year."* However, due to a lack of applications, a meeting of the Board of Adjustment has not taken place since June of 2018. Consequently, the 2018 election of officers has not taken place. Staff proposes for the Board of Adjustment to hold officer elections at the regular meeting of April 23, 2019, to be effective until July 2020. However, the Board may have alternative suggestions.

Additionally, staff would like hold a discussion with the Board on options for how to handle the election of officers in the future, specifically in situations where there are no applications to consider for the regular July meetings. A couple suggestions possibly worth considering include:

- Hold a regular meeting in July of each year for the purpose of holding annual elections, regardless of if there are any applications submitted for consideration by the Board.
- Hold annual elections a few months prior to the effective date of officers assuming positions, but still cancel the meeting if there are no applications to consider. The idea here would be to have multiple opportunities to hold an election at a meeting at which the Board would be hearing (an) application(s), without having to hold a meeting just to hold elections.

Enclosure

**BOARD OF ADJUSTMENT
BY-LAWS
CITY OF FARGO
(ADOPTED AUGUST 27, 2013)**

The Board of Adjustment for the City of Fargo, North Dakota, hereinafter referred to as the "Board," does hereby adopt these by-laws that shall govern its internal operations.

I. MEMBERSHIP

The Board shall be composed of those individuals who have been duly appointed thereto by the Board of City Commissioners.

The Board shall consist of five (5) members and one (1) alternate to be appointed for three (3) year terms by the Mayor and subject to confirmation by the City Commission.

Vacancies shall be filled in the same manner as other appointments to the Board.

II. OFFICERS

The Chairperson shall generally preside and conduct all Board meetings, with the advice and consent of other members, may appoint committees from Board members to perform specific duties.

The Vice Chairperson - In the event of the absence, disability, resignation or conflict of interest of the Chairperson, the Vice-Chairperson shall exercise all the powers and duties of said Chairperson, performing this function, the Vice Chairperson shall automatically become Board Chairperson and the position of Vice Chairperson shall be deemed vacant and the Board may elect from its own members a successor Vice Chairperson to fill this vacancy at its next meeting.

III. MEETINGS

Quorum - A quorum shall consist of four (4) members.

Annual Meeting - At the regular annual meeting on the fourth Tuesday of July of each year, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year.

Meetings - The Board shall meet on the fourth Tuesday of each month at 9:00 o'clock a.m. If the regular meeting date falls on a holiday when the City governing offices are generally closed, the meeting will be held on the regular meeting day and time of the succeeding week.

Continued Meetings - The City will send out re-notification to all interested parties when a variance request has been tabled by the Board.

Meeting Location - All regular meetings of the Board shall be held in the City Commission Room unless otherwise published or distributed in the public notice for the public hearing.

Order of Business - The items of business to be considered at any meeting shall be specified on the notice of such meetings, which shall be the meeting agenda and which shall be transmitted to each member not later than five days immediately preceding the meeting date. Items of business at any meeting will be considered by the Board in the order in which they appear on the meeting agenda and, except in the cases of emergency or mistake, no items shall be added thereto after said written agenda is transmitted to Board members.

Records - The Board shall keep a record of its resolutions, transactions, findings, and determinations; and, such record shall be a public record.

IV. VOTING

All Board members, including the Chairperson and Vice-Chairperson, shall be entitled to one equal vote at any meeting. There shall be no voting by proxy. Dissenting votes or abstentions on any matter presented to the Board shall be clearly expressed orally or in writing when voting is in process. All administrative matters, other than appeals presented for Board consideration, shall be decided by the majority vote of those present at the meeting. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the building official or to decide in favor of the applicant any matter upon which it has jurisdiction.

V. COMPENSATION

All members of the Board shall serve without compensation. When duly authorized by the Board, members thereof may attend planning conferences or meetings of planning institutions or hearings upon legislation, and the Board may pay the reasonable traveling expenses incidental to such attendance pursuant to a resolution spread upon its minutes.

VI. PURPOSE

The purpose of this Board is to provide for deviations from the literal provisions of the Zoning codes in specific instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances to those particular parcels only when it is demonstrated that such actions will be in keeping with the spirit and intent of this code.

VII. OTHER PROCEDURES

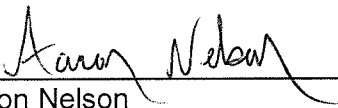
All operating procedures not specifically provided for herein shall generally be governed by "Robert's Rules of Order" which is hereby incorporated for purposes of reference. In the event any provision of "Robert's Rules of Order" are inconsistent herewith, these By-Laws shall govern.

VIII. CONTROL OF LAW

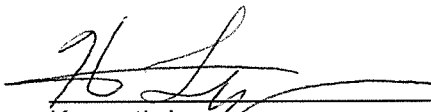
The By-Laws of the Board generally shall be governed by the applicable ordinances of the City of Fargo, laws of the State of North Dakota, and laws of the United States of America and any provisions herein inconsistent or in conflict with such laws or ordinances shall be deemed void.

IX. AMENDMENT AND REPEAL

Except when in conflict with state statutes, these By-Laws may be amended or repealed from time to time by the affirmative vote of a majority of the appointed Board members at a meeting. Said By-Laws may be made inoperative regarding any particular subject matter by the affirmative vote of a majority of Board members.



Aaron Nelson
Secretary, Board of Adjustment



Kenneth Lepper
Chairperson, Board of Adjustment