



## PLANNING AND DEVELOPMENT

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### MEMORANDUM

**TO:** Board of Adjustment  
**FROM:** Aaron Nelson, Planner *AN*  
**DATE:** April 20, 2017  
**RE:** Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, April 25, at 9:00 a.m. in the City Commission Room at Fargo City Hall. If you are not able to attend, please contact staff at 241-1474 or [planning@cityoffargo.com](mailto:planning@cityoffargo.com). Thank you.

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**BOARD OF ADJUSTMENT**  
**Tuesday, April 25, 2017 9:00 a.m.**  
**City Commission Room**  
**AGENDA**

1. Approve Minutes of February 28, 2017 Meeting
2. New Business
  - a-1) Variance Request – 1423 7<sup>th</sup> Avenue South  
*Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow construction of a detached garage that would encroach into the required interior-side setback area within the SR-3, Single-Dwelling Residential, zoning district.*
  - a-2) Appeal of an Administrative Decision  
*Appellant claims that staff erred in issuing a stop work order for construction of a detached garage.*
  - b) Variance Request – 1023 1st Avenue South  
*Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow the opening of a proposed building to be approximately 3.7 feet lower, and the fill around the building to be approximately 3.45 feet lower, than would otherwise be required by the City's Floodproofing Code.*
3. Other Business
4. Adjournment

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Board of Adjustment meetings are broadcast live on cable channel TV Fargo 56 and can be seen live by video stream on [www.cityoffargo.com/streaming](http://www.cityoffargo.com/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 241-1474 or TDD at 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:**

**February 28, 2017**

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, February 28, 2017.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Russell Ford-Dunker,  
Mark Lundberg, Mike Mitchell

Also Present: Erik Johnson

Absent: Michael Love

Chair Wendel-Daub called the meeting to order.

### **Item 1: Approve Order of Agenda**

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

### **Item 2: Approval of Minutes: Regular Meeting of January 24, 2017**

Member Ford-Dunker moved the minutes of the January 24, 2017 Board of Adjustment meeting be approved. Second by Member Mitchell. All Members present voted aye and the motion was declared carried.

Deb explained the voting requirements and process.

### **Item 4: New Business**

#### **a) Appeal of an Administrative Decision**

**Appellant claims that staff erred in determining that two sets of siblings and a fifth person does not qualify as a Household as defined by the Land Development Code (LDC): DENIED**

Planner Aaron Nelson presented an overview on the background regarding staff's decision to deny the applicant's request. He explained the Relevant Code Provisions supporting staff's decision, and referred to the section of the Land Development Code included in the packet. He also noted the memo in the packet outlining the legal opinion of City Attorney Erik Johnson. Mr. Nelson stated the applicant feels staff erred in their decision and is bringing the appeal before the Board of Adjustment for a ruling.

Discussion by the Board followed including further clarification of the existing Land Use Code Table 20-0401 as it relates to the definition of a "Household", the guidelines staff followed during their review, and the process and timeline if the appellant chooses to apply for a Conditional Use Permit.

Appellant and property owner Greg Wentz spoke on behalf of the appeal. Mr. Wentz explained when the current lease expires this July; the property will no longer be a rental property and will be occupied by his own family.

Member Lundberg moved to affirm staff's decision that two sets of siblings and a fifth person does not qualify as a Household as defined by the Land Development Code. Second by Member Boreen. Upon call of the roll Members Lundberg, Mitchell, and Wendel-Daub voted aye. Members Boreen and Ford-Dunker voted nay. Absent and not voting: Member Love. The motion was declared carried.

**Item 5: Other Business**

No other business was discussed.

**Item 6: Adjournment:**

Member Mitchell moved to adjourn the meeting at 9:52 a.m. Second by Member Lundberg. All Members present voted aye and the motion was declared carried.

## CITY OF FARGO - Board of Adjustment Variance Staff Report

|  |                             |
|--|-----------------------------|
| <b>Item No:</b> 2.a-1  | <b>Date:</b> April 20, 2017 |
| <b>Address:</b> 1423 7 <sup>th</sup> Avenue South  |                             |
| <b>Legal Description:</b> Lot 9, Browns Subdivision of Wright & Stones Subdivision of Block 5, Darlings Addition |                             |
| <b>Owner(s)/Applicant:</b> Chad Klimek   |                             |
| <b>Reason For Request:</b> To construct a garage within the required setback area.                               |                             |
| <b>Zoning District:</b> SR-3, Single Dwelling Residential  |                             |
| <b>Status:</b> Board of Adjustment Public Hearing: April 25, 2017  |                             |

| SR-3 Dimensional Standards |     | Proposed Accessory Structure Standards |               |
|----------------------------|-----|--|---------------|
| <b>Setbacks:</b>           |     | <b>Setbacks:</b>                       |               |
| <b>Front:</b>              | 20' | <b>Front:</b>                          | >20'          |
| <b>Interior-Side:</b>      | 3'  | <b>Interior-Side:</b>                  | <b>1' 10"</b> |
| <b>Rear:</b>               | 3'  | <b>Rear:</b>                           | 3'            |

### Background:

On September 19, 2106, a building permit was issued to the applicant, Chad Klimek, to remove an existing garage and construct a new 22' x 30' detached garage in the rear yard of a single-family home located at 1423 7<sup>th</sup> Avenue South, which is within the SR-3, Single-Dwelling Residential, zoning district. The new garage was to be located at least 3 feet away from the interior-side and rear property lines, in order to conform to the required setbacks for rear-yard accessory structures within the SR-3 zoning district. Section 20-0403(B)(3) of the LDC allows accessory structures to be constructed as close as 3 feet from interior-side and rear property lines, provided that the accessory structure is located within the rear yard of the property. The applicant, however, has substantially constructed the garage one foot and two inches (1' 2") from the interior-side lot line. Accordingly, the applicant is requesting a variance in order to allow the garage to encroach one foot and 10 inches (1' 10") into the required interior-side setback area.

According to the applicant, he intended to construct the garage in conformance with the three-foot setback and based his determination on the location of the property line on existing conditions of the property such as the location of the driveway, fence, and previously existing garage. However, a survey submitted by the applicant's neighboring property owner showed that the applicant's garage was being constructed within the required three-foot setback. The City does not survey or determine the location of private property lines when reviewing or approving building permit applications. It is the responsibility of the property owner and permit holder to ensure that they are meeting all city code requirements, such as setbacks. Because the City was presented with evidence of a setback violation (i.e. a survey produced by a registered land surveyor), the City Building Official issued a stop work order for the construction of the garage. The applicant disagrees with the survey submitted by the neighboring property owner and has also appealed staff's discussion to issue the stop work order, in addition to this requested variance.

### 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;**



The subject property is 6,249 square feet in area, which is 1,249 square feet more than the minimum required lot size of 5,000 square feet in the SR-3 zoning district. In addition, the minimum lot width in the SR-3 zoning district is 50 feet and subject property is 50 feet wide. Of the 61 single-family lots within 300 feet of the subject property, the median lot area is 7,103 square feet and the median lot width is 50 feet. As a result, no unique dimensional conditions were identified for the property.

In addition to the lot dimensions being typical for the neighborhood, the 3-foot accessory structure setback applies to all single-family zoning districts. Consequently, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the same zoning district, as the subject property does not differ from properties within the surrounding neighborhood and no unique conditions have been identified. **(Criteria NOT satisfied)**

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

In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date, staff has received two written comments on this application from neighboring property owners who own the property to the north and to the west of the subject property, both objecting to the requested variance. Copies of these letters are attached. The property owner to the north has concerns with the dimensions and location of the garage and the property owner to the west has concerns related to encroachment onto his property. **(Criteria NOT 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;**

According to the applicant, the variance is being requested in order to allow a garage, which is a typical accessory structure permitted with single-family homes. Specifically, the applicant states that the variance is needed to allow construction of the garage within the western interior-side setback area in order to avoid impeding the back entrance of the house on the property.

However, staff finds that the property can be used for an otherwise allowed use without coming into conflict with applicable site development standards. A garage could be accommodated on the subject property while meeting the dimensional standards of the Land Development Code. The existing house currently sits approximately 65 feet from the rear property line and the lot width is 50 feet. As a result, there is about 62 linear feet of buildable distance between the back of the house and the required rear setback line and 44 linear feet of buildable distance between interior side setback lines. This equates to an accessory building envelop of approximately 2,728 square feet in the rear yard of the property. Staff finds that there is currently enough buildable area behind the existing house to construct a garage without coming into conflict with the applicable site development standards.

Ultimately, staff finds that the strict application of the applicable standards does not constitute an unnecessary physical hardship because the subject property can be used for a garage (as an accessory use) without coming into conflict with applicable development standards. **(Criteria NOT satisfied)**

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

Staff has no data that would suggest 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 a garage could be constructed without coming into conflict with applicable site development standards and the requested variance does

not appear to arise from conditions that are unique to the subject property not ordinarily found in the same zoning district. However, if a hardship were found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the garage in the location proposed by the applicant. **(Criteria satisfied)**

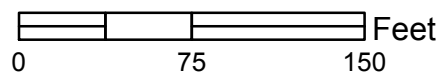
**Staff Recommendation:** “To accept the findings of staff and deny the requested variance to allow a garage to be constructed within the required interior-side setback in the SR-3 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a, b, & c) have not been met.”



**Legend**

|     |      |     |      |
|-----|------|-----|------|
| AG  | LC   | MHP | SR-1 |
| DMU | LI   | NCI | SR-2 |
| GC  | MR-1 | NO  | SR-3 |
| GI  | MR-2 | P/I | SR-4 |
| GO  | MR-3 | UMU | SR-5 |

**1423 7th Avenue South**







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## 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): Chad Kline Date: 4-7-17  
**Note:** A nonrefundable filing 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: \_\_\_\_\_



## 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:             | Representation Information: (if applicable) |
|---|---|
| Name (printed): <u>Chad Klimmek</u>     | Name (printed): _____                       |
| Address: <u>2075 Rose Creek Blvd S.</u> | Address: _____                              |
| Primary Phone: <u>701 306 1471</u>      | Primary Phone: _____                        |
| Alternative Phone: _____                | Alternative Phone: _____                    |
| Fax: _____                              | Fax: _____                                  |
| Email: <u>fargoatm@yahoo.com</u>        | Email: _____                                |

| Location of property requesting a variance:  |
|--|
| Address: <u>1423 7th Ave S.</u>  |
| Zoning District: _____   |
| Legal Description: <u>Lot <del>100</del> #9 of Brownes Subdivision of Wright and Stones</u><br><u>subdivision of Block 5 Darlings Addition</u> |

### Proposed Variance Information:

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

~~100~~ ~~setback~~ setback

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 is 3ft currently it is at <sup>14</sup> inches right now and 95% completed -

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 garage is 22x30 and is <sup>property</sup> inches away from the <sup>property</sup> line. It supposed to be 3ft. However we believe the survey is inaccurate. (Enclosed is letter from Houston Engineering.) In order to be accurate the whole block must be surveyed ~~to~~ due to lack of pins. We can justify the need for a variance if we put in a fire wall on the west side of garage.

### 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;

Generally in the 1920's garages and fences were built close to the property lines. This was not my intention as the garage was built even further away than the previous garage.

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

None of the garage including the overhang is on their property. I believe it to be 4 1/2 feet on my side of the property.

- 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;

~~Does not~~ If the garage was placed any further inside my property it would impede on the back entrance of the house.

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

<sup>Apply</sup>  
Does not <sup>apply</sup> any of the above.

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

~~Does not~~ I am asking for 22 inches variance

## Aaron Nelson

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**From:** Steve Peterson <stevepeterson58103@gmail.com>  
**Sent:** Wednesday, April 12, 2017 12:11 PM  
**To:** Aaron Nelson  
**Subject:** Variance Request: 1423 7th Ave S

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

\*\*\*\*\* CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Dear Mr Nelson

My wife, Jane and I own the property at 1426 6th Ave S, directly north of the above referenced property.

The variance request notification points to a 3-foot encroachment into the interior-side setback. My wife and I object and protest this request for approval of a variance.

Further, we are asking your office to confirm that the proposed structure meets Code for back-side setback, as well as overall height.

Also, would you please describe the distribution pattern of your "written notice" letter; e.g., was the notification sent to all property owners in a one/two/three-block radius?

Thank you for your assistance in this matter.

Steve and Jane Peterson  
1426 6th Ave S  
Fargo, ND 58103  
701-799-1036

Sent from mobile device

04/13/2017

To Whom It May Concern:

The following is my response to Chad Himeks' request for a variance. I, Michael Eisert, the adjacent property owner believes this request should be denied. Why? Let me list my reasons why.

1. I have informed him in person and by text message that he is required to have a three foot set back from the property line for his building project.
2. He was also informed by the city permit office of these regulations when he applied for his permit.
3. City attorney, Erik Johnson also passed this information on to him.
4. He has already poured a long driveway that is actually 3 feet on my property. How do I know that? I had Neset Land Surveys Inc. do a survey. Pins were set by Cole Neset clearly showing the property line, and how he is not only in violation of the three foot setback, but he has in effect captured three feet of my property with that illegal concrete pour.
5. He has also done damage to my property during this construction.
6. He has an attitude to just go full bore ahead without thoroughly checking things out, or listening to the several people, including myself, who have tried to work with him in a responsible way.

Respectfully submitted,

Michael Eisert



CITY OF FARGO  
FARGO, NORTH DAKOTA  
**BUILDING PERMIT**

DATE 9/19/2016  
PERMIT NO. BL20161938

SPECIAL FLOOD HAZARD ☒ FLOOD PROTECTION ELEVATION \_\_\_\_\_

SPECIAL FLOOD HAZARD PERMITS SHALL BE CONSTRUCTED IN ACCORDANCE TO THE FLOOD PROOFING CODE OF THE CITY OF FARGO.

PERMIT ADDRESS 1423 7 AVE S

ADDITION 0540

LEGAL DESCRIPTION

LOT 9 BLK 5 ADDN# 0540 (Darlings 1st) ADDITIONAL INFO: BROWNS SUBD

TOWNSHIP \_\_\_\_\_

OWNER KLIMEK, CHAD PHONE \_\_\_\_\_ VENDOR \_\_\_\_\_ LICENSE# \_\_\_\_\_  
CONTRACTOR CASH SALE 701-306-1471 C100 CASH  
ADDITIONAL CONTRACTORS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARCHITECT OR DESIGNER  
WORK CLASS ING

CONTACT \_\_\_\_\_

DESCRIPTION OF WORK

**Remove existing garage. Construct 22'x26' detached garage. Garage to be located completely in the rear yard with a max. height of 15'. Min. separation of 3' clear side yards to interior side property lines and min. set back to prop. lines for street side yards as required by the LDC. All work to comply with all applicable requirements of the City of Fargo including the 2015 Fargo Building Code.**

VALUATION \$8,000.00 PLAN FEE \$0.00 PERMIT FEE \$68.60 TOTAL FEE \$68.60  
INVESTIGATION FEE \$0.00

BLDG. SQ. FT. \_\_\_\_\_ HEIGHT \_\_\_\_\_ NUMBER OF STORIES \_\_\_\_\_ OCCUP. GROUP R-3  
WIDTH \_\_\_\_\_ DEPTH \_\_\_\_\_ NUMBER OF UNITS \_\_\_\_\_ OCCUP. LOAD \_\_\_\_\_  
TYPE CONSTRUCTION VB

TREATED PLATES Required FOUNDATION Concrete  
SMOKE DETECTORS \_\_\_\_\_ ROOF \_\_\_\_\_  
WINDOW AREA \_\_\_\_\_ HEATING \_\_\_\_\_  
EXITS REQUIRED \_\_\_\_\_ BASEMENT \_\_\_\_\_  
FIRE SPRINKLERS \_\_\_\_\_ FIREPLACES \_\_\_\_\_

ZONE SR-3 LOT SIZE 6250.00  
FRONT YARD 20 SIDE YARD 10/10 REAR YARD 15 STREET \_\_\_\_\_ MAX. LOT COVER 35  
Lot Width Front 50 Lot Depth1 125  
Lot Width Back 50 Lot Depth2 125 NOTICE

SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, HEATING, AIR CONDITIONING, PARKING LOTS AND SIGNS.

**PLEASE BE SURE TO READ THE DISCLAIMER ON THE REVERSE SIDE OF THIS PERMIT.**

Signature of Contractor or Authorized Agent

Signature of Owner (If owner builder)

Signature of Issuer

Date 9-19-16  
Date 9/19/16  
Date \_\_\_\_\_

DATE 9/19/2016

PERMIT NO. BL20161938

\*\*\*Note: This permit becomes void if construction is not begun within 180 days or is suspended or abandoned at any time for 180 days after work is commenced.

#### Building Permit Acknowledgments

1. I understand and certify that issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction, in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction exist.
2. Through application for and acceptance of this building permit the permit applicant/holder/owner understands and agrees that the City will conduct periodic observations of construction, but that such observation or review of plans and/or construction does not constitute either explicit or implied certification that the plans and/or construction comply with City Codes or any other applicable requirements. The permit applicant/holder/owner at all times remains responsible for ensuring that the construction, plans, and specifications comply with all requirements of all City Codes and other applicable requirements. The City will not provide continuous on-site observation of construction, and disclaims any responsibility for defects in materials or workmanship.
3. The City encourages and recommends the permit applicant/holder/owner hire a private, on-site inspector or other professional as the applicant/holder/owner deems necessary in order to ensure that all aspects of the plans and/or construction comply with applicable codes and all other requirements.

AS PERMIT APPLICANT, I ACKNOWLEDGE THAT I HAVE BEEN MADE AWARE OF THE ABOVE STATEMENTS AND CONDITIONS.

APPLICANT INITIALS: CK DATE: 9-19-16

AS BUILDING OFFICIAL, I ACKNOWLEDGE THAT I HAVE MADE THE PERMIT APPLICANT AWARE OF THE ABOVE STATEMENTS AND CONDITIONS.

BUILDING OFFICIAL INITIALS: MAS DATE: 9/19/16

# Detached Garages and Accessory Buildings



## CITY OF FARGO BUILDING INSPECTION DEPARTMENT

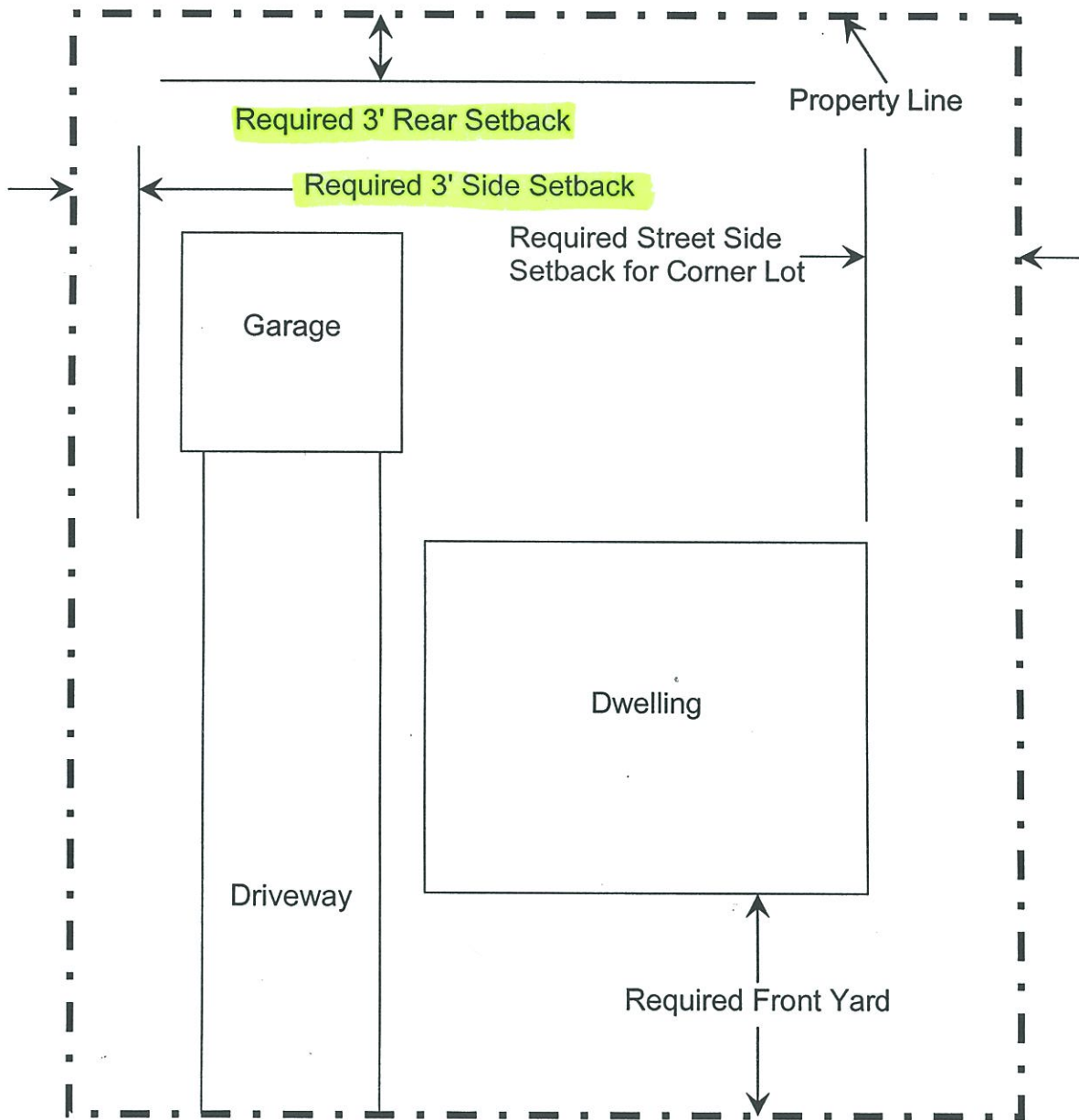
The State of North Dakota requires that you call 1-800-795-0555 at least two business days before you dig.

This handout does not address any covenants or easements assigned to the property, nor does it relieve you of code compliance with items that may not have been included from the International Residential Code (IRC).



# Location on Property

Detached garages and accessory buildings may not be built within three (3) feet of the side or rear lot lines. If your property is on a corner you are required to meet the street side setbacks in the table on the previous page. Construction on easements is prohibited. If the structure will be within six (6) feet of a residence special fire protection regulations may apply.







Office of the City Attorney

City Attorney  
Erik R. Johnson

October 28, 2016

Assistant City Attorney  
Nancy J. Morris

Chad Klimek  
2705 Rose Creek Blvd. S.  
Fargo, ND 58104

By US Mail and email (fargoatm@yahoo.com)

Michael Eisert  
3725 Burritt St. S.  
Fargo, ND 58104

By US Mail and email (meisert@ideaone.net)

**RE: City building permit for garage issued to Mr. Klimek**

Dear Mrrs. Klimek and Eisert:

It has come to my attention that there is a boundary line dispute between the two of you, as owners of adjoining properties. Mr. Eisert is the owner of the property located at 1429 7<sup>th</sup> Ave. S., Fargo. Mr. Klimek is the owner of the property at 1423 7<sup>th</sup> Ave. South. Mr. Klimek has obtained a building permit from the City for a garage to be constructed in his rear yard. Mr. Eisert claims that the wooden forms for the concrete slab and thickened foundation for the garage structure, yet to be built, encroaches upon Mr. Eisert's property. Mr. Klimek disagrees with Mr. Eisert and claims that the wooden forms and, therefore, the ultimate concrete slab and garage structure itself are located wholly within the boundaries of his property.

This letter is to inform you that the City is not in a position to resolve this boundary line dispute. This is a matter that must be resolved between the property owners. The City has no authority to serve as an arbiter of a boundary line dispute. As has been made clear to you both the City's issuance of a building permit is NOT a representation made by the City as to whether or not the structure that is the subject of the permit is, or will be, located in the appropriate location. It is the responsibility of the property owner requesting the building permit (or the owner's agent, such as a contractor) to construct the structure in the proper location. The role of the City's inspector is NOT to establish or maintain boundary lines or to ensure that structures being inspected are within boundary lines.

A properly qualified surveyor may be able to resolve all doubt regarding the dispute in question. Certainly, if there is an error in the location of a building and a nearby property boundary, there may be significant consequences--legal, financial or otherwise. Therefore, you are hereby urged to act with caution. As with any dispute, I urge you both to work to resolve your differences amicably.

Sincerely,

A handwritten signature in black ink, appearing to be "ERJ", written over a horizontal line.

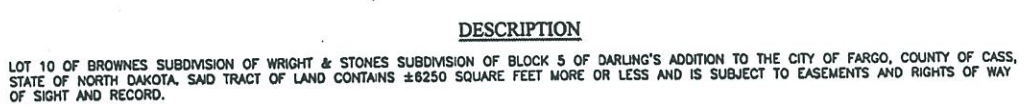
Erik Johnson

ERJ/lmw

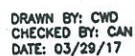
cc: Bruce Taralson, Building Official



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LOT 10 OF BROWNES SUBDIVISION OF WRIGHT & STONES SUBDIVISION OF BLOCK 5 OF DARLUNG'S ADDITION TO THE CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA, SAID TRACT OF LAND CONTAINS ±8250 SQUARE FEET MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF MIGHT AND RECORD.





1111 Westrac Drive, Suite 108  
Fargo, ND 58103

Phone (701) 235-0199

Fax (701) 235-2074

LAND SURVEYS

April 4, 2017

City of Fargo Inspections  
200 3<sup>rd</sup> St N  
Fargo, ND 58102

RE: Residential Property Survey at 1429 7<sup>th</sup> Ave S, Michael Eisert

As requested by the City of Fargo I hereby acknowledge that I did install the monuments as depicted on the Certificate of Survey provided to the homeowner dated 3-30-17.

The monuments installed are #5 Rebar with blue plastic caps stamped LS-7513. During a visual inspection of the east line of the subject property I noted a 14" plus or minus dimension from the subject property line to the east, an existing garage wall.

Sincerely,

**Neset Land Surveys Inc.**

**Cole Neset**  
**President**

**Neset Land Surveys, Inc.**

PO Box 9765

Fargo, ND 58106

Phone # 701-371-6991

cneset@nesetsurveys.com

| Date      | Invoice # |
|-----------|-----------|
| 3/30/2017 | 1762      |

**Bill To**

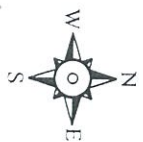
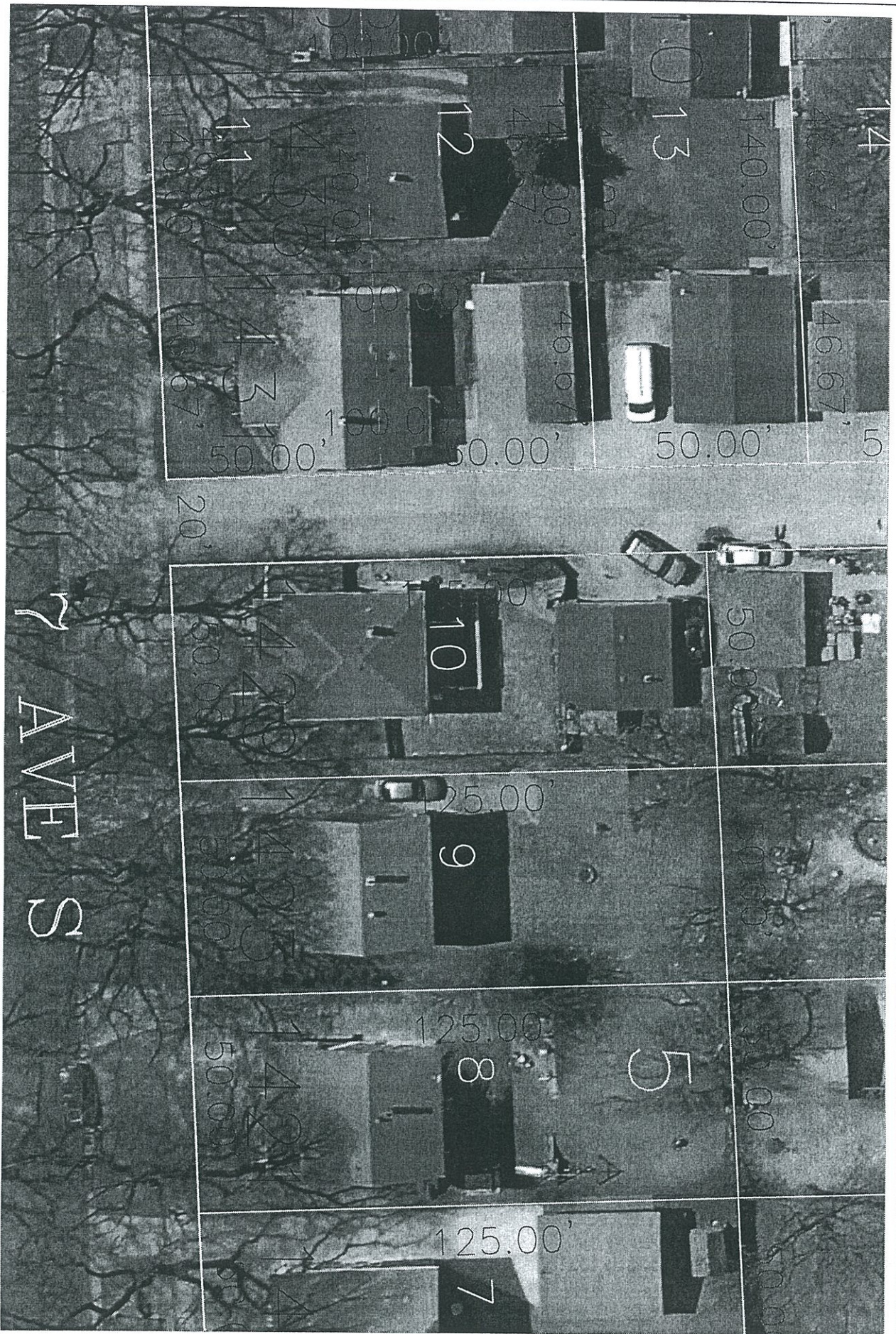
Michael Eisert  
3725 Burritt St S  
Fargo, ND 58104

Terms

Net 30

| Description  | Amount                |
|--|-----------------------|
| Residential Property Survey Lot 10 Block 5 of Brownes Subdivision to the City of Fargo<br>-Site visit 3-27-17...\$550<br>-Completed Survey Record...\$100<br>Total Lump Sum Fee \$650.00 | 650.00                |
| Thank you for your business. Please remit to address above.  | <b>Total</b> \$650.00 |





Scale: 1"= 30'

1429 7th Ave S

Photo Date: 2015

THIS AERIAL MAP IS NOT A SUBSTITUTE FOR ACCURATE FIELD SURVEYS

**Fargo**

Engineering Dept.



Mike

7:59 PM

Your old garage was on the line the new garage has to be 4 feet or more on your lot.your footings are off. Look for the lot pins then show me them thanks



Type a message...



Chad

thanks

Ok thank u. Sorry about the dirt if there is any damage we will fix it.

8:03 PM

10:16 10:42 AM

Did we have a 11 meet today

10:40 AM

If so would 11:30 work?

10:42 AM

10:16 10:29 AM

Hey Mike it Chad.  
Can you call your



Type a message...





4G LTE 51% 12:32 PM  
Aa 1429 7 Chad Scott  
Mobile

Hey Mike it Chad.  
Can you ask your  
tenant to move  
his truck when we  
pour concrete this  
weekend.  
I would really  
appreciate it makes it  
much easier

10:29 AM

10/10/16 11:26 AM

Hey Chad. Where you  
interested in buying  
the house at 1429 7th  
ave s fargo

11:26 AM

I'm still considering it

11:28 AM

Type a message...

4G LTE 51% 12:32 PM  
Aa 1429 7 Chad Scott  
Mobile  
ave s fargo

I'm still considering it

11:28 AM

Thought you said  
you would know by  
Monday

11:30 AM

I have 2 other  
properties I'm  
comparing it to I  
haven't decided

11:32 AM

When might you know

11:33 AM

I'm confused. Does  
my decision of buying  
your home affect the  
truck being moved?

11:37 AM

Type a message...



10/16/16 12:32 PM  
Aa 1429 7 Chad Scott  
Mobile

MESSAGES PHOTOS & VIDEOS GIFT CONTACT

truck being moved?

10/16/16 12:07 PM

No, I believe that we might have a issue with the property line yet. I talked to Deb Schmidt from the city of fargo her phone number is 701 241 1547, . She told me that the middle of alley it would be 10 feet to our property line. Then it is 50 feet to your property. Your new driveway is on our property about 1

12:07 PM

+ Type a message... :)

10/16/16 12:33 PM  
Aa 1429 7 Chad Scott  
Mobile

new driveway is on our property about 1 foot or more I could meet you there so I could show you . That's why I wanted to know if you wanted to buy the house so the problem would be resolved

10/16/16 12:21 PM

It's not on your property I have already checked and have been reassured

12:21 PM

With who so I can be assured. Please give

12:25 PM

+ Type a message... :)



Aa 1429 7 Chad Scott

Mobile

With who so I can be assured. Please give me there name and number

12:25 PM

10/10/16 1:12 PM

If you want to be-reassured call someone to locate it for you if your that concerned obviously you won't be satisfied until the property is surveyed

1:12 PM

Your fence is on the property line

1:16 PM

No you said you

Type a message...



Aa 1429 7 Chad Scott

Mobile

No you said you had someone you reassured you so who is it,so we can get this resolved or did you just say that. Chad I just want to be fair to both sides

1:16 PM

No the fence is way on our property

1:17 PM

I have people that have measured and people's opinions. It won't be 100% until the whole block is surveyed

1:17 PM

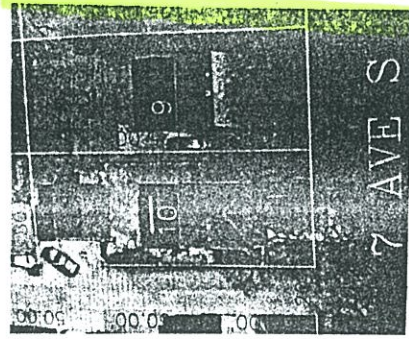


Type a message...





block is surveyed



1429 7th Ave S  
Photo Date: 2015  
Map Data: © 2015 Google, © 2015 Mapbox, © 2015 OpenStreetMap contributors, © 2015 Imagery

Look at the picture

Yes your fence is on  
the property line

The fence is far left of



Type a message...



The fence is far left of  
the white line

Let's get together so I  
can show you did you  
get the picture?

picture is not accurate  
depiction of what the  
real property lines are

The city said from the  
middle of the alley to  
your property is 60  
feet 10 for alley 50 for  
my lot use any tape  
measure you want it  
works out the same  
let's get together what



Type a message...





12:33 PM

Aa 1429 7 Chad Scott

Mobile

MESSAGES

PHOTOS & VIDEOS

EGIFT

CONTACT

they measure

Call Deb Schmidt I sent  
you her phone number  
ask her she would be  
nonbiased

Wenday what time?

1:47 PM

10/10/16 2:08 PM

Not sure right now  
get back to you on  
Wednesday

2:08 PM

Ok thanks

2:08 PM

10/22/16 10:39 AM

Chad...we stopped  
by 1429 7th ave in

Type a message...

12:33 PM

Aa 1429 7 Chad Scott

Mobile

MESSAGES

PHOTOS & VIDEOS

EGIFT

CONTACT

works out the same  
let's get together what  
time works for you?

Maybe Wednesday  
should work

1:31 PM

I have already  
measured from that  
spot. However until  
the whole block is  
measured that is not  
accurate

1:32 PM

10/10/15 1:47 PM

The city told me the  
before they pave the  
alley they measure  
Call Deb Schmidt I sent

1:47 PM

Type a message...



10/22/16 12:33 PM

Aa 14297 Chad Scott  
Mobile

Chad...we stopped by 1429 7th ave in Fargo today. There is still an issue with the property line that you are well aware of. You continue to move forward with your project even though it's in the wrong. Please call me so we can resolve this fairly before concrete is poured. Mike Eisert

10:39 AM

10/22/16 10:49 AM

Everything is correct. I had it checked.

Type a message...



10/22/16 12:34 PM

Aa 14297 Chad Scott  
Mobile

Everything is correct. I had it checked.

You might want to check your fence. It is on my property I believe.

10:51 AM

With who? The city engineers say I am correct not just one but three I have their names if you want I met with Scott he has the picture with names and numbers let's get this resolved

10:55 AM

I already did. It's

10:56 AM



Type a message...





I already did. It's correct

10:53 AM

With who? I don't know why is there names a secret

10:53 AM

No. i had the city over as well on Monday to verify.

I'm 100% on where the property line is. You should get it surveyed so you know as well.

11:01 AM

Your fence is on the property line and a little on my property. But that's ok, it

Type a message...

little on my property. But that's ok, it doesn't bother me.

No its not. Who stopped over? What is his name

11:03 AM

Do your own foot work. I've already discussed this with you. I don't see a reason to keep going over this.

11:06 AM

My life is very busy I don't have time for this.

10/22/16 11:31 AM

Type a message...



Aa 1429 7 Chad Scott

Mobile

MESSAGES

PHOTOS & VIDEOS

eGIFT

CONTACT

10/22/16 11:31 AM

I have done my foot  
work I have have  
names and numbers  
and have given them  
to you

11:31 AM

No. not reliable Mike.

11:33 AM

Do not come over and  
harass my workers.  
Stay off my property  
when they are  
working.

11:34 AM

10/22/16 12:03 PM

Type a message...



Aa 1429 7 Chad Scott

Mobile

12:03 PM

You stay off our  
property also the city  
engineers will be over  
Monday. It's to bad  
we are not able to  
resolve this property  
line dispute like two  
business men

12:03 PM

Mike if you acted  
professional towards  
my workers I would  
consider it.

If you walk on my  
property again you  
will be going to jail.  
Stay away from my  
workers and keep  
your ride comments

12:05 PM



Type a message...





property again you will be going to jail. Stay away from my workers and keep your rude comments to yourself. Start acting like a grown up.

10/22/16 12:21 PM

How about the concrete and dirt you have on my property that I did not give you permission to do . Plus the damage on the lawn your workers have done. I have documented everything with

pictures. And you think I am being unprofessional?

10/22/16 12:50 PM

You watched me pour concrete in my driveway. You never said a word about anything Now you think it's on your property? No it is not Mike.

Maybe you need to find a hobby and quit harassing people over nothing but what you believe is true.



You have no factual evidence what's so ever that supports any of what your saying.

There is no damage on your lawn.

Make sure you, your wife and your son stay on your side of your property or all of you will be arrested and charged.

You have been warned.

Your a trouble maker and a liar. I don't do



Type a message...



12:50 PM

Your a trouble maker and a liar. I don't do business with people that lie and try to get something for nothing.

10/22/16 12:53 PM

You poured the concrete behind my back. I have pictures of the damage and no one has harassed your workers. You are being completely



Type a message...





your workers. You are being completely unreasonable at this point. I have taken the time to show you where the lot line is. I have given you the names of engineers from the city of Fargo and their contact information to inform you of where the lot line is. You refuse to contact them and have resorted to name calling.

And you continue to lie Mike.  
Again I don't do

12:58 PM

And you continue to lie Mike.  
Again I don't do business with people like you.  
We called the cops on you because you yelled and screamed and threatened my workers.  
The police have the incident filed. So there is now record of you acting like a child.

No we called the police because of one of the



← Aa 1429 7 Chad Scott Mobile 12:35 PM

No we called the police because of one of the workers threatened to punch us. We spoke to the officers at length and again you were not there so how would you even know what's going on. Even the officers stated they would be frustrated about how you are treating us.

10/22/16 1:14 PM

No he didn't. More lies Mike. What is the matter with you? You don't walk up to

Type a message...



← Aa 1429 7 Chad Scott Mobile 12:35 PM

You don't walk up to somebody so close that your nose touches the other person. Your lucky my contractor was a nice guy. Most people wouldn't tolerate that. Are you 2 years old? Grow up and start acting like an adult.

10/22/16 1:22 PM

Again your miss informed and revert to name calling.

Delivered

1:22 PM

Type a message...





informed and revert to  
name calling.

Delivered

You are Mike.

10/22/16 1:30 PM

No name calling.  
Just telling you are  
unprofessional and  
you act like a child.  
I don't act like you

10/22/16 1:35 PM

You should apologize  
to my contractor  
for your belligerent  
behavior



**CITY OF FARGO**  
**Board of Adjustment**  
**Appeal of an Administrative Decision Staff Report**

**Item No:** 2.a-2

**Date:** April 20, 2017

**Appellant:** Chad Klimek

**Status:** Board of Adjustment – April 25, 2017

**Summary of Record**

**Background:**

On September 19, 2106, a building permit was issued to the appellant, Chad Klimek, to remove an existing garage and construct a new detached garage in the rear yard of a single-family home located at 1423 7<sup>th</sup> Avenue South. The new garage was to be located at least 3 feet away from the interior-side and rear property lines, in order to conform to the required setbacks for rear-yard accessory structures within the SR-3, Single-Dwelling Residential, zoning district.

In the early stages of construction, the location of the subject property's western interior-side lot line (and consequently, the location of the proposed garage) was disputed by the neighboring property owner, Michael Eisert. Klimek and Eisert were both informed by staff that the City does not conduct surveys of private property lines and that private property line disputes are civil matters that the City does not arbitrate. On October 24, 2016, staff discussed the property line dispute with Eisert and the appellant's contractor. The contractor agreed to pour the garage slab with a second thickened edge in relation to where Eisert thought the property line was, in case the garage would need to be moved east from the edge of the concrete slab. Work continued on the garage over the next several months. At the end of March, 2017, Eisert submitted a certificate of survey of his property (which included the property line shared with the appellant's property) to the City. It was indicated in a letter provide by Eisert's surveyor, Cole Neset, that the appellant's garage was being constructed approximately 14 inches from the shared property line (which would be 22 inches within the required three-foot setback). Upon reviewing the information provided by the surveyor, the Building Official issued a stop work order for the appellant's garage on April 3, 2017. Subsequently, on April 7, Klimek appealed staff's decision to issue the stop work order.

**Claim of Appellant:**

The appellant, Chad Klimek, submitted an appeal of an administrative decision claiming that staff erred in issuing a stop work order on the construction of his detached garage. The appellant disputes the validity of the survey that was submitted to the City by his neighbor.

**Exhibits:**

The following exhibits are admitted as part of this staff report and are attached:

- Exhibit 1 – The appellant's appeal application
- Exhibit 2 – Building Permit No. BL20161938
- Exhibit 3 – Zoning Map for the area of 1423 7<sup>th</sup> Avenue South
- Exhibit 4 – Parcel Report for the property at 1423 7<sup>th</sup> Avenue South
- Exhibit 5 – Survey of neighboring property & letter from Cole Neset
- Exhibit 6 – Letter to Chad Klimek and Michael Eisert from City Attorney, Erik Johnson.

**Relevant Facts**

Staff believes that the following facts are most relevant to the Board's consideration of this appeal:

1. The property at 1423 7<sup>th</sup> Avenue South is located within the SR-3 (Single-Dwelling Residential) zoning district. *Exhibits 3 & 4*

2. The appellant signed the building permit, which acknowledges that the permit applicant/holder/owner is responsible for ensuring that construction complies with all City Codes, and that the permit does not prevent the building official from requiring the correction of errors in the construction. *Exhibit 2*
3. A survey of Lot 10 of Brownes Subdivision of Wright & Stones Subdivision of Block 5 of Darling's Addition has been provided to the City by Michael Eisert. The survey has been stamped and signed by Cole A. Neset, a registered land surveyor in the State of North Dakota. *Exhibit 5*
4. A registered land surveyor, Cole A. Neset, submitted a letter to the City indicating that the subject garage is located 14 inches from the shared property line of the appellant, Klimek, and the neighboring property owner, Eisert. *Exhibit 5*

### **Relevant Code Provisions**

#### **LDC Section 20-0403(B.3) – Accessory Development Standards**

*In zoning districts other than UMU, when located within the rear yard area, accessory structures shall be exempt from rear setback requirements, provided that they shall be set back at least 3 feet from rear and side lot lines. This 3-foot setback shall not apply to fences or walls.*

#### **LDC Section 20-1103(C) – Stop Work**

*With or without revoking permits, the City may stop work on any building or structure, on any land on which there is an uncorrected violation of a provision of the Land Development Code or of a permit or other form of authorization issued hereunder, in accordance with its power to stop work under the building code.*

#### **Section 20-0916.G – Review and Action of Appeals by the Board of Adjustment**

*Appeals of Administrative Decisions shall be taken to the Board of Adjustment. The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence. A concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official.*

### **Staff Analysis**

As referenced on the building permit application and within the City Attorney's letter, the City's issuance of a building permit is not a representation made by the City as to the construction being compliant with applicable City Codes. It is the responsibility of the owner and permit holder to ensure that the construction, plans, and specifications comply with all requirements of all City Codes. When the building permit was issued by the City, it was understood by all parties that the garage was required to be set back at least 3 feet from the interior-side and rear property lines. The City does not locate private property lines as part of the building permitting process—nor is the City required to. In this situation, a survey conducted by a registered land



surveyor, Cole Neset, was submitted to the City by the neighboring property owner, Michael Eisert. The information provided by this survey indicated that the subject garage was being constructed within 3 feet of the interior-side property line, which would mean that the appellant had erred in determining the location of his interior-side property line. The decision to issue the stop work order was based on the most accurate and reliable information available to the City. Staff has no other information to suggest that the garage is located at least 3 feet from the interior-side property line. The appellant has submitted a letter from Houston Engineering that outlines the reason why they did not conduct a survey on behalf of the appellant. Although this letter states these reasons for not conducting the survey, it does not negate the survey conducted by Neset. The survey submitted to the City is stamped and signed by a registered land surveyor, licensed in the State of North Dakota, and therefore staff grants the survey with an assumption of validity.

### **Staff Recommendation**

Staff recommends that the Board of Adjustment affirm staff's decision to issue the stop work order.



## PLANNING AND DEVELOPMENT

200 Third Street North  
Fargo, North Dakota 58102

Phone: (701) 241-1474

Fax: (701) 241-1526

E-Mail: [planning@cityoffargo.com](mailto:planning@cityoffargo.com)

[www.cityoffargo.com](http://www.cityoffargo.com)

### APPEAL OF AN ADMINISTRATIVE DECISION

We, the undersigned, do hereby submit an application to the Board of Adjustment of the City of Fargo, North Dakota, to hear and decide an appeal of a decision made by an administrative official of the City of Fargo.

#### Property Owner Information

Name (printed): Chad Klinek  
Address: 2075 Rose Creek Blvd. S.  
Fargo ND 58104  
Primary Phone: 701 306 1471  
Alternative Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: Fargoatm@yahoo.com

#### Representation Information (if applicable)

Name (printed): \_\_\_\_\_  
Address: \_\_\_\_\_  
Company: \_\_\_\_\_  
Primary Phone: \_\_\_\_\_  
Alternative Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
☐ Same as property owner

#### Location of property involved in the appealed decision (if applicable)

Address: 1423 7th Ave. S. Fargo, ND  
Legal Description (attach separate sheet if more space is needed): lot #10 and #9 of Brown  
Subdivision of Block 5 Darlings Addition

#### Item for Appeal (attach separate sheet if more space is needed)

Garage being built on Property at 1423 7th Ave. S. Fargo, ND 58104

#### Reason for Appeal (attach separate sheet if more space is needed)

The Survey that was done by Cole Neset is not accurate.  
I hired Houston Engineering in the fall prior to garage being  
built to survey my lot. They came out and could only  
find 1 pin on the whole block. Houston Engineering stated  
that if I wanted an accurate reading they would <sup>have</sup> to do  
the whole block and ~~not~~ just locate my property which  
could end up costing thousands of dollars. They refused to

only survey my lot due to it not being accurate. After  
talking to city inspectors surveyors from Houston Engineering and  
doing my own measurements. I placed the garage at least  
4 1/2 feet inside of my property line (next page)



(Continued)

I called Cole Neset and asked him about his survey.

I described the situation to him and asked him how he came up with his measurements being there was only 1 pin on the entire block etc... I proceeded to tell Cole that Houston Engineering refused to only do the lots in question because of inaccuracies. Cole responded by saying and I quote "Anyone with enough guts would do the survey."

I reported Cole Neset to the ND State board of registration for Land Surveyors.

Also when I called to see if his license was valid they told me that it was. I asked if ~~they~~ Neset had any certified employees working for them. They looked him up and Cole Neset DOES NOT have any registered employees working for him.

My contractors building the garage told me 4 guys got out of a beat up <sup>unmarked</sup> Suburban and were trying to measure the lot. Bickering back and forth where the lines. When I showed the contractor a picture of Cole Neset the contractor told me he did not recognize him as one of the people that came over to measure the land.

Please take my letter from Houston Engineering into consideration in determining the accuracy of this surveyor.



## PLANNING AND DEVELOPMENT

200 Third Street North  
Fargo, North Dakota 58102

Phone: (701) 241-1474

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E-Mail: [planning@cityoffargo.com](mailto:planning@cityoffargo.com)

[www.cityoffargo.com](http://www.cityoffargo.com)

**Acknowledgement** – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.

Owner (Signature): Chad Klum Date: 4-7-17

Representative (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

### Office Use Only

Date Filed: \_\_\_\_\_ Pre-Application Meeting Date: \_\_\_\_\_

Application Complete: ☐ Yes ☐ No Reviewed By: \_\_\_\_\_



April 5, 2017

Chad Klimek  
2075 Rose Creek Blvd. S.  
Fargo, ND 58104

**Subject:** 1423 7<sup>th</sup> Avenue South  
Lot 5, Browne's Subdivision of Wright and Stone's  
Subdivision of Block 5 of Darling's Addition  
Fargo, ND

Mr. Klimek,

The purpose of this letter is to document the fact that in September, 2016, you requested that we conduct a limited property boundary survey at the above referenced property. Your request was for us to find the lot corner monuments for the referenced lot, not exceeding a certain pre-agreed upon budget amount for the work without receiving authorization from you.

On September 22, 2016, a survey crew under my direct supervision conducted a search for the lot corner monuments of the referenced lot and found none of them in-place. A search for monuments of the nearby lots, as well for the four block corner monuments, found only the southwest block corner in-place. Our working calculations to determine search positions for lot corners indicated there were going to be several potential encroachment issues in the southwest portion of the block.

At this point I contacted you and informed you that with the low number of monuments found, and with the apparent complexity of our initial calculated lot lines not fitting well with the existing improvements in the block, that it would be a significantly more expensive survey than what was budgeted for with the initial agreed upon limited survey. It was my opinion that a detailed survey of the entire block might be necessary to determine the correct positions of the lot corner of the referenced lot. You requested that we not proceed with any further work at that time.

Thank you.

Sincerely,

HOUSTON ENGINEERING, INC.



Curtis A. Skarphol

Professional Land Surveyor, North Dakota License No. 4723

H:\Fargo\JBN\8900\8974\16\_8974\_001\Deliverables\Chad Klimek letter 4-5-17.docx

[houstoneng.com](http://houstoneng.com)



CITY OF FARGO  
FARGO, NORTH DAKOTA  
**BUILDING PERMIT**

DATE 9/19/2016  
PERMIT NO. **BL20161938**

SPECIAL FLOOD HAZARD ☐

FLOOD PROTECTION ELEVATION \_\_\_\_\_

SPECIAL FLOOD HAZARD PERMITS SHALL BE CONSTRUCTED IN ACCORDANCE TO THE FLOOD PROOFING CODE OF THE CITY OF FARGO.

PERMIT ADDRESS **1423 7 AVE S**

ADDITION 0540

LEGAL DESCRIPTION

LOT 9 BLK 5 ADDN# 0540 (Darlings 1st) ADDITIONAL INFO: BROWNS SUBD

TOWNSHIP \_\_\_\_\_

OWNER KLIMEK, CHAD

CONTRACTOR CASH SALE

ADDITIONAL CONTRACTORS \_\_\_\_\_

PHONE  
701-306-1471

VENDOR  
C100

LICENSE#  
CASH

ARCHITECT OR DESIGNER

WORK CLASS

ING

CONTACT \_\_\_\_\_

DESCRIPTION OF WORK

**Remove existing garage. Construct 22'x26' detached garage. Garage to be located completely in the rear yard with a max. height of 15'. Min. separation of 3' clear side yards to interior side property lines and min. set back to prop. lines for street side yards as required by the LDC. All work to comply with all applicable requirements of the City of Fargo including the 2015 Fargo Building Code.**

VALUATION \$8,000.00 PLAN FEE \$0.00 PERMIT FEE \$68.60 TOTAL FEE \$68.60

INVESTIGATION FEE \$0.00

BLDG. SQ. FT. \_\_\_\_\_

HEIGHT \_\_\_\_\_

NUMBER OF STORIES \_\_\_\_\_

OCCUP. GROUP R-3

WIDTH \_\_\_\_\_

DEPTH \_\_\_\_\_

NUMBER OF UNITS \_\_\_\_\_

OCCUP. LOAD \_\_\_\_\_

TYPE CONSTRUCTION VB

TREATED PLATES

Required

FOUNDATION

Concrete

SMOKE DETECTORS

ROOF

WINDOW AREA

HEATING

EXITS REQUIRED

BASEMENT

FIRE SPRINKLERS

FIREPLACES

ZONE SR-3 LOT SIZE 6250.00

FRONT YARD 20

SIDE YARD

10/10

REAR YARD 15

STREET \_\_\_\_\_

MAX. LOT COVER 35

Lot Width Front 50

Lot Depth1

125

Lot Width Back 50

Lot Depth2

125

NOTICE

SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, HEATING, AIR CONDITIONING, PARKING LOTS AND SIGNS.

**PLEASE BE SURE TO READ THE DISCLAIMER ON THE REVERSE SIDE OF THIS PERMIT.**

Signature of Contractor or Authorized Agent

Signature of Owner (If owner builder)

Signature of Issuer

Date

9-19-16

Date

9/19/16

Date



DATE 9/19/2016

PERMIT NO. **BL20161938**

\*\*\*Note: This permit becomes void if construction is not begun within 180 days or is suspended or abandoned at any time for 180 days after work is commenced.

**Building Permit Acknowledgments**

1. I understand and certify that issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction, in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction exist.

2. Through application for and acceptance of this building permit the permit applicant/holder/owner understands and agrees that the City will conduct periodic observations of construction, but that such observation or review of plans and/or construction does not constitute either explicit or implied certification that the plans and/or construction comply with City Codes or any other applicable requirements. The permit applicant/holder/owner at all times remains responsible for ensuring that the construction, plans, and specifications comply with all requirements of all City Codes and other applicable requirements. The City will not provide continuous on-site observation of construction, and disclaims any responsibility for defects in materials or workmanship.

3. The City encourages and recommends the permit applicant/holder/owner hire a private, on-site inspector or other professional as the applicant/holder/owner deems necessary in order to ensure that all aspects of the plans and/or construction comply with applicable codes and all other requirements.

**AS PERMIT APPLICANT, I ACKNOWLEDGE THAT I HAVE BEEN MADE AWARE OF THE ABOVE STATEMENTS AND CONDITIONS.**

APPLICANT INITIALS: CK DATE: 9-19-16

**AS BUILDING OFFICIAL, I ACKNOWLEDGE THAT I HAVE MADE THE PERMIT APPLICANT AWARE OF THE ABOVE STATEMENTS AND CONDITIONS.**

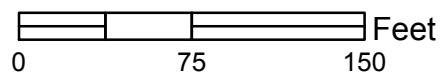
BUILDING OFFICIAL INITIALS: mas DATE: 9/19/16



Legend

|     |      |     |      |
|-----|------|-----|------|
| AG  | LC   | MHP | SR-1 |
| DMU | LI   | NCI | SR-2 |
| GC  | MR-1 | NO  | SR-3 |
| GI  | MR-2 | P/I | SR-4 |
| GO  | MR-3 | UMU | SR-5 |

1423 7th Avenue South



N







**Parcel Information Report**  
**Parcel Number: 01-0540-00560-000**

**General Information**

Segment Id: 1  
Owner 1: KLIMEK, CHAD  
Owner 2:  
Property Address: 1423 7 AVE S  
Mailing Address: 2705 ROSE CREEK BLVD S FARGO, ND 58104  
Addition Name: Darlings 1st  
Block: 5  
Lot: 9

Additional Description:  
BROWNS SUBD

Estimated Flood Stage Levels For River Flooding:  
If your property is outside the city limits or your property and structure are not affected by a 25 to 44 foot flood stage data will be not available (N/A).

Property may be affected by an approximate flood stage of 40 or higher.  
Structure may be affected by an approximate flood stage of 42 or higher.

Please note that this approximation does not take into account any local issues such as ice and debris jams or localized flooding from intense rainfall events.

**District Information**

Cass School District: 1  
Elem. School District: Jefferson

**Property Valuation**

|                          | Land        | Improvements | Total        |
|--------------------------|-------------|--------------|--------------|
| Current Appraised Value: | \$22,600.00 | \$136,600.00 | \$159,200.00 |

**Building Information**

|                      |      |                           |             |
|----------------------|------|---------------------------|-------------|
| Year Built:          | 1920 | No. of Apartment Units:   |             |
| Total Building SqFt: | 1484 | Residential Story Height: | 7 (2 Story) |

**Lot Size**

|               |        |                 |                   |
|---------------|--------|-----------------|-------------------|
| Front Width:  | 50.00  | Land Use:       | R (Residential)   |
| Back Width:   | 50.00  | Property Type:  | 1 (Single Family) |
| Depth Side 1: | 125.00 |                 |                   |
| Depth Side 2: | 125.00 | Square Footage: | 6250.00           |

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

# Zoning

Zone 1: SR-3

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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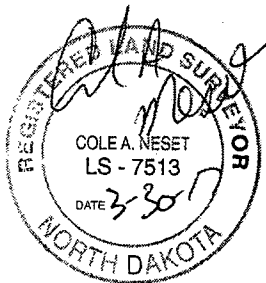


**CERTIFICATE OF SURVEY**  
**LOT 10 OF BROWNES SUBDIVISION OF WRIGHT & STONES**  
**SUBDIVISION OF BLOCK 5 DARLING'S ADDITION**  
**TO THE CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA**



**DESCRIPTION**

LOT 10 OF BROWNES SUBDIVISION OF WRIGHT & STONES SUBDIVISION OF BLOCK 5 OF DARLING'S ADDITION TO THE CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA. SAID TRACT OF LAND CONTAINS ±6250 SQUARE FEET MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF SIGHT AND RECORD.



**SURVEYORS CERTIFICATE**

I, COLE A. NEŠET HEREBY CERTIFY THAT THIS SURVEY, PLAN, AND/OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

COLE A. NEŠET  
 LS-7513

DATE 3-30-17

**LEGEND**

- MONUMENT SET
- MONUMENT FOUND
- EX. EASEMENT
- EX. PROPERTY LINE
- PROPERTY BOUNDARY LINE
- CENTER LINE/SECTION LINE



NOTE 1: THE SOUTHEAST CORNER OF THE SUBJECT PARCEL WAS NOT SET BY THE SURVEYOR DUE TO A NEW CONCRETE DRIVEWAY

DRAWN BY: CWD  
 CHECKED BY: CAN  
 DATE: 03/29/17

*rec'd 3/31/17 - BT*



**Neset**  
LAND SURVEYS

1111 Westrac Drive, Suite 108  
Fargo, ND 58103

Phone: (701) 235-0199

Fax: (701) 235-2074

---

April 3, 2017

City of Fargo Inspections  
200 3<sup>rd</sup> St N  
Fargo, ND 58102

RE: Residential Property Survey at 1427 7<sup>th</sup> Ave S, Michael Eisert

As requested by the City of Fargo I hereby acknowledge that I did install the monuments as depicted on the Certificate of Survey provided to the homeowner dated 3-30-17.

The monuments installed are #5 Rebar with blue plastic caps stamped LS-7513. During a visual inspection of the east line of the subject property I noted a 14" plus or minus dimension from the subject property line to the east, an existing garage wall.

Sincerely,

**Neset Land Surveys Inc.**

**Cole Neset**  
**President**





Office of the City Attorney

City Attorney  
Erik R. Johnson

October 28, 2016

Assistant City Attorney  
Nancy J. Morris

Chad Klimek  
2705 Rose Creek Blvd. S.  
Fargo, ND 58104

By US Mail and email (fargoatm@yahoo.com)

Michael Eisert  
3725 Burritt St. S.  
Fargo, ND 58104

By US Mail and email (meisert@ideaone.net)

**RE: City building permit for garage issued to Mr. Klimek**

Dear Mrrs. Klimek and Eisert:

It has come to my attention that there is a boundary line dispute between the two of you, as owners of adjoining properties. Mr. Eisert is the owner of the property located at 1429 7<sup>th</sup> Ave. S., Fargo. Mr. Klimek is the owner of the property at 1423 7<sup>th</sup> Ave. South. Mr. Klimek has obtained a building permit from the City for a garage to be constructed in his rear yard. Mr. Eisert claims that the wooden forms for the concrete slab and thickened foundation for the garage structure, yet to be built, encroaches upon Mr. Eisert's property. Mr. Klimek disagrees with Mr. Eisert and claims that the wooden forms and, therefore, the ultimate concrete slab and garage structure itself are located wholly within the boundaries of his property.

This letter is to inform you that the City is not in a position to resolve this boundary line dispute. This is a matter that must be resolved between the property owners. The City has no authority to serve as an arbiter of a boundary line dispute. As has been made clear to you both the City's issuance of a building permit is NOT a representation made by the City as to whether or not the structure that is the subject of the permit is, or will be, located in the appropriate location. It is the responsibility of the property owner requesting the building permit (or the owner's agent, such as a contractor) to construct the structure in the proper location. The role of the City's inspector is NOT to establish or maintain boundary lines or to ensure that structures being inspected are within boundary lines.

A properly qualified surveyor may be able to resolve all doubt regarding the dispute in question. Certainly, if there is an error in the location of a building and a nearby property boundary, there may be significant consequences--legal, financial or otherwise. Therefore, you are hereby urged to act with caution. As with any dispute, I urge you both to work to resolve your differences amicably.

Sincerely,

A handwritten signature in black ink, appearing to be "Erik Johnson", written over a horizontal line.

Erik Johnson

ERJ/lmw

cc: Bruce Taralson, Building Official



## CITY OF FARGO - Board of Adjustment Variance Staff Report

| <b>Item No:</b> 2.b   |  | <b>Date:</b> April 20, 2017                                   |
|---|--|---|
| <b>Address:</b> 1023 1 <sup>st</sup> Avenue South   |  |   |
| <b>Legal Description:</b> Lot 7, Block 10, Original Townsite  |  |   |
| <b>Owner(s)/Applicants:</b> 1023 Flats, LLC/Jesse Craig.  |  |   |
| <b>Reason For Request:</b> To construct a new building with a lower opening and a lower earth fill elevation than would otherwise be required by the City’s Floodproofing Code. |  |   |
| <b>Zoning District:</b> DMU: Downtown Mixed-Use   |  |   |
| <b>Status:</b> Board of Adjustment Public Hearing: April 25, 2017   |  |   |
| Floodproofing Code Standards  |  | Proposed Structure  |
| <b>Elevations:</b>  |  | <b>Elevations:</b>  |
| <b>Lowest opening:</b>  | 41-foot WSEIA plus 1.2’<br>or FEMA BFE plus 2.0’ | <b>Lowest opening:</b> 41-foot WSEIA <b>minus 2.5’</b>        |
| <b>Fill around building:</b>  | 41-foot WSEIA plus 0.7’<br>or FEMA BFE plus 1.5’ | <b>Fill around building:</b> 41-foot WSEIA <b>minus 2.75’</b> |

### Background:

The applicant has proposed to construct a new three-story multi-dwelling building that would have a lower opening and a lower earth fill elevation around the building than would otherwise be required by the City's Floodproofing Code. The property is located at 1023 1<sup>st</sup> Avenue South and is within the 41-foot water surface elevation inundation area (WSEIA). At this location, the BFE is at an elevation of about 901.2 feet and the 41-foot WSEIA is at an elevation of 903.3 feet. For construction within the WSEIA, the Floodproofing Code requires the following:

1. The lowest opening in a building is required to be at or above an elevation that is 1.2 feet above the 41-foot WSEIA elevation. (903.3-foot WSEIA elevation plus 1.2 feet = 904.5')
2. The fill around the building is required to be at or above an elevation that is 0.7 feet above the 41-foot WSEIA elevation. (903.3-foot WSEIA elevation plus 0.7 feet = 904')
3. The fill within 15 feet of the building must be at or above the FEMA BFE (901.2')\*

*\*It should be noted that the proposed structure is not within the FEMA BFE, though the structure needs to be floodproofed or floodable due to the 41' inundation area requirement*

The applicant's proposed building would include apartment units on the second and third floors with indoor parking on the ground floor. The subject property is located within the DMU, Downtown Mixed-Use, zoning district and the applicant intends to construct the proposed building within inches of the property lines, as the DMU zoning district does not require building setbacks.

The ground floor and lowest opening of the proposed building would be at an elevation of 900.8, which is 3.7 feet lower than what is required for the lowest opening elevation. In addition, the fill around the building would be at an elevation of 900.55, which is 3.45 feet lower than required. Accordingly, the applicant is requesting a variance in order to allow the building to have the lowest opening and fill around the building at a lower elevation than is required by the Floodproofing Code.

According to the applicant, the proposed building would not be possible without the variance because constructing the building in accordance with the Floodproofing Code would necessitate a driveway ramp so steep that vehicular ingress/egress on the ground floor would be impossible. The applicant has stated that all equipment susceptible to flood damage would be elevated at or above the 41-foot WSEIA elevation of 903.3



feet. In addition, the applicant has proposed to incorporate garage doors that would open automatically when triggered by flood waters, in order to equalize potential water pressure against the building.

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. It should also be noted that the state rules require elevation on fill to the BFE +1 foot. In an attempt to keep new construction compliant with this state requirement into the future, we are requiring the additional 1.2 feet.

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 stormsewer 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;**

With a concrete foundation, main level parking and the right materials, there should be no materials swept onto other lands.

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

Staff has no data to suggest that the proposed variance would cause an increased danger 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;**

Due to the entry-level elevation for vehicle access to the underground parking facility, it should be expected that flooding may occur in the parking area for large concentrated rainfall event.

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

High-density residential development is an important asset to downtown and aligns with many of the goals of the Go2030 Comprehensive Plan as well as many related downtown planning goals.

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



Not applicable. The subject property is not located adjacent to a water body and a waterfront location is not necessary to the facility.

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

The 41-foot WSEIA affects a large portion of the city, including many developed area. The availability of alternative locations is limited.

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

The project meets the requirements of the DMU zoning district and matches with the intent of the DMU zoning district. With the limited to non-existent lot line setbacks, additional rainfall drainage will be seen by adjoining properties until they are redeveloped in a similar way.

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

The proposed use aligns with many goals of the Go2030 Comprehensive Plan. Floodplain management is related to the City's floodproofing policies as part of 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. The subject property will be protected from flooding from the Red River by the downtown flood walls. All of the proposed residential dwelling units are located on the second and third floors, above the 41-foot WSEIA elevation.

**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.**

Staff has no data to suggest that the proposed variance would increase or decrease costs to provide governmental services.

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.

Staff recommends that if a variance is granted, that it should be conditioned upon the applicant agreeing to a waiver of liability against the City and upon the property owner administering an emergency response plan for flood events. If the variance is granted, staff would suggest that City Engineering staff work with the City Attorney's Office to draft an acknowledgment form that would outline the owner's decision and personal risk 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. In addition, any approval should be conditioned upon the owner taking steps to mitigate potential

flood impacts to the property, such as elevating building equipment and using floodable building techniques and materials.

The presentation of this application presents an opportunity for the policy review related to this application. Several policy discussions are encountered by staff when considering the application at this location and as such, the Board and staff are invited to bring further elements for discussion as part of the public hearing.

**Staff Recommendation:** “To accept the findings of staff and approve the requested variance on the basis that the review considerations of Section 21-0603 have been satisfied, with the following conditions:

1. The applicant sign and submit a waiver of liability against the City;
2. The owner administering an emergency response plan for flood events;
3. Building services susceptible to flood damage, such as electrical and mechanical equipment, shall be located above the 41’ WSEIA elevation of 903.3 feet;
4. The first floor of the building shall be designed to automatically allow free flow of floodwater into the structure in order to equalize floodwater pressure against the building; and
5. The proposed building shall not have a basement.”



Updated Application Submitted  
4-3-17



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

## 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: 04/03/2017  
*Note: A nonrefundable filing 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: \_\_\_\_\_

\* Site plan and drawings on flash drive

## 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):             | 1023 Flats, LLC.          |
| Address:                    | PO Box 426 Fargo ND 58107 |
| Primary Phone:              | (701) 232-1355            |
| Alternative Phone:          | (701) 212-0986            |
| Fax:                        | (701) 232-1377            |
| Email:                      | jrcraig701@gmail.com      |

| Representation Information: (if applicable) |                            |
|---|----------------------------|
| Name (printed):                             | Jesse Craig                |
| Address:                                    | PO Box 426 Fargo, ND 58107 |
| Primary Phone:                              | (701) 232-1355             |
| Alternative Phone:                          | (701) 212-0986             |
| Fax:  | (701) 232-1377             |
| Email:                                      | jrcraig701@gmail.com       |

| Location of property requesting a variance: |   |
|---|---|
| Address:                                    | 1023 1st Avenue South Fargo, ND 58103             |
| Zoning District:                            | Downtown Mixed Use (DTMU)                         |
| Legal Description:                          | Lot: 7 Block: 10 Original Townsite Lot 7 Block 10 |

### Proposed Variance Information:

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

Flood Variance

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

City Standard for the site is 903.3' + 1.2' or 904.5' we are at 900.8'

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.)

Our project is a 10 unit apartment complex consisting of a main floor parking garage with 2 levels of living quarters above. Each floor is composed of 3 one bedroom units and 2 two bedroom units. The variance is requested as raising the elevation of the project to 904.5' from 900.8' would make construction of the project impossible as the ramp into the parking garage would be too steep, as to make entering the garage with a vehicle impossible. Allowing the project to be constructed at the proposed 900.8' elevation would make traffic both in and out of the project possible thereby making the entire project possible.



Craig Properties – 1<sup>st</sup> Avenue South Apartments, Fargo

The following items taken from the Fargo, ND Code of Ordinances, for Appeals-Variances section, 21-0603. -Administration, with KLJ observations are included below. Our observations are based on site visit and review of the plans and construction documents created by TL Stroh Architects/ Interiors, Mead & Hunt, and Sandman Structural Engineers, dated March 15, 2017.

It is our understanding of the 1<sup>st</sup> Avenue South Apartments project (to be located at 1023 – 1<sup>st</sup> Ave S), is to replace a single-family dwelling previously located on this same site. The first level of the proposed improvement will be designated as garage for parking vehicles and is shown to be at ground level of 900.8 (NAVD88). Living spaces will be located above this first level. The published Base Flood Elevation (BFE) is 901.2 at cross-section “BK” from the 2015 FIS. The city of Fargo 41-foot WSEIA is 903.3, with the required buffer of 1.2 ft above this level. That would indicate 904.5 for the lowest opening (garage door) per Fargo Codes. The City Street for ingress/egress driveway is at elevation 899.3, approximately, This is a required elevation change of 5.2 feet in 25 feet, or 20% grade. There would be similar issues with side doors as the proposed structure will be located near the street right of way and the steep grades would apply here also.

21-0603(G)(5)

- a. **The danger that materials may be swept onto other lands to the injury of others;**  
The new structure’s lowest level will be set near the elevation of the previous dwelling ground line elevation, which does not increase the threat of materials being swept.
- b. **The danger to life and property due to flooding or erosion damage;**  
Same as above.
- c. **The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;**  
Vehicles stored in the ground level garage or other items stored on this first floor would be subject to flood waters.
- d. **The importance of the services provided by the proposed facility to the community;**  
The new structure will provide 10 units of housing at a location near bustling downtown Fargo, which can help reduce housing shortage. It also serves to revitalize properties that have been used for lower density housing recently.
- e. **The necessity to the facility of a waterfront location, where applicable;**  
This site is not on waterfront.
- f. **The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**  
This is the proposed used of this parcel of land. There is no other use for it as currently zoned.
- g. **The compatibility of the proposed use with the existing and anticipated development;**  
This area is zoned for this use and benefits the downtown by providing living space for workers. This area is walking/ biking distance to many of the downtown businesses.

Craig Properties – 1<sup>st</sup> Avenue South Apartments, Fargo

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

This project is located within the city of Fargo's plan to minimize flooding in the city by use of local flood protection and ultimately with the Fargo Moorhead Metropolitan Diversion project set for future construction.

**i. The safety of access to the property in times of flood for ordinary and emergency vehicles;**

All streets in this neighborhood will be inundated if the levels indicated above are ever reached. That includes this property and streets that service the property and would likely trigger a larger emergency response on behalf of the city.

**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;**

Expect static levels of water in this location. The sediment and erosion would be the same wither built up to the elevation required or built as planned – sodded soil will be the same.

**k. The cost 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.**

Same as any flood event as current state of property, there would be no extra costs.



## Aaron Nelson

---

**From:** Nick Horner <nhorner@craigdevelopment.build>  
**Sent:** Thursday, April 13, 2017 1:44 PM  
**To:** Aaron Nelson  
**Subject:** 1st Avenue South Apartments Flood Variance

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

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Mr. Nelson,

As per our discussion last week I have put together some information regarding our flood variance request.

All equipment subject to damage if the building were to flood will be either moved from the first floor or raised to an elevation equivalent to or exceeding the 41' flood level of 903.3'. This includes the water heater being placed in the third floor mechanical room and the elevator equipment in the first floor elevator equipment room to be placed on a riser 2.5' in height or greater.

To allow flood waters into the building thus mitigating the threat of differential pressures causing structural damage, the building will incorporate liquid level sensing float switches installed on both the North and South entrances that when triggered will open their respective garage doors allowing water to enter the structure.

If there is anything additional that you need or if you have any questions please do not hesitate to contact me.

Thank you for your time and have a great day,

 **NICK HORNER** Project Manager  
P. (701) 212-0986  
E. nhorner@craigdevelopment.build  
A. 1405 1st Ave N Fargo, ND 58102

**CRAIG**  
DEVELOPMENT, INC.

# CRAIG PROPERTIES

# 1st AVENUE SOUTH APARTMENTS



FRONT



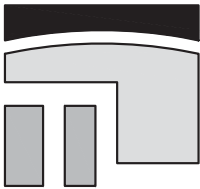
SIDE

## SHEET INDEX

|                           |                                |                                       |
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| G-1 CERTIFICATE OF SURVEY | S002 SPECIAL INSPECTIONS       | SP-1 DEMOLITION SITE PLAN - SITE PLAN |
|                           | S101 FOUNDATION PLAN           | A1.1 OVERALL FLOOR PLAN               |
|                           | S201 SECOND FLOOR FRAMING PLAN | A1.2 ROOF PLAN & DETAILS              |
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|                           | S204 SHEAR WALL PLAN           | A3.1 BUILDING ELEVATIONS              |
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|                           | S401 FRAMING DETAILS           | A4.2 BUILDING SECTIONS                |
|                           | S402 FRAMING DETAILS           | A5.1 WALL SECTIONS                    |
|                           | S403 FRAMING DETAILS           | A5.2 WALL SECTIONS                    |
|                           |                                | A6.1 DOOR SCHEDULE & DETAILS          |

## DESIGN TEAM

ARCHITECTURAL



**STROH**  
ARCHITECTS | INTERIORS

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STRUCTURAL  
ENGINEER

**SANDMAN**  
*Structural Engineers*

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ARCHITECTS | INTERIORS  
8 Seventh St. N.  
Fargo, N.D. 58102  
Office (701) 239-4198  
Fax(701) 239-9643  
www.tlstroh.com

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Registered Architect under the laws of the State of North Dakota.

Date MARCH 15, 2017 Reg. No. 423

Project:

CRAIG PROPERTIES  
1st AVENUE SOUTH APARTMENTS  
1023 1st AVENUE SOUTH  
FARGO, ND 58102

Location:  
1023 1st AVE. SOUTH  
FARGO, ND 58102

Drawn By:  
TL, MB

Date:  
MARCH 15, 2017

Revision Date:

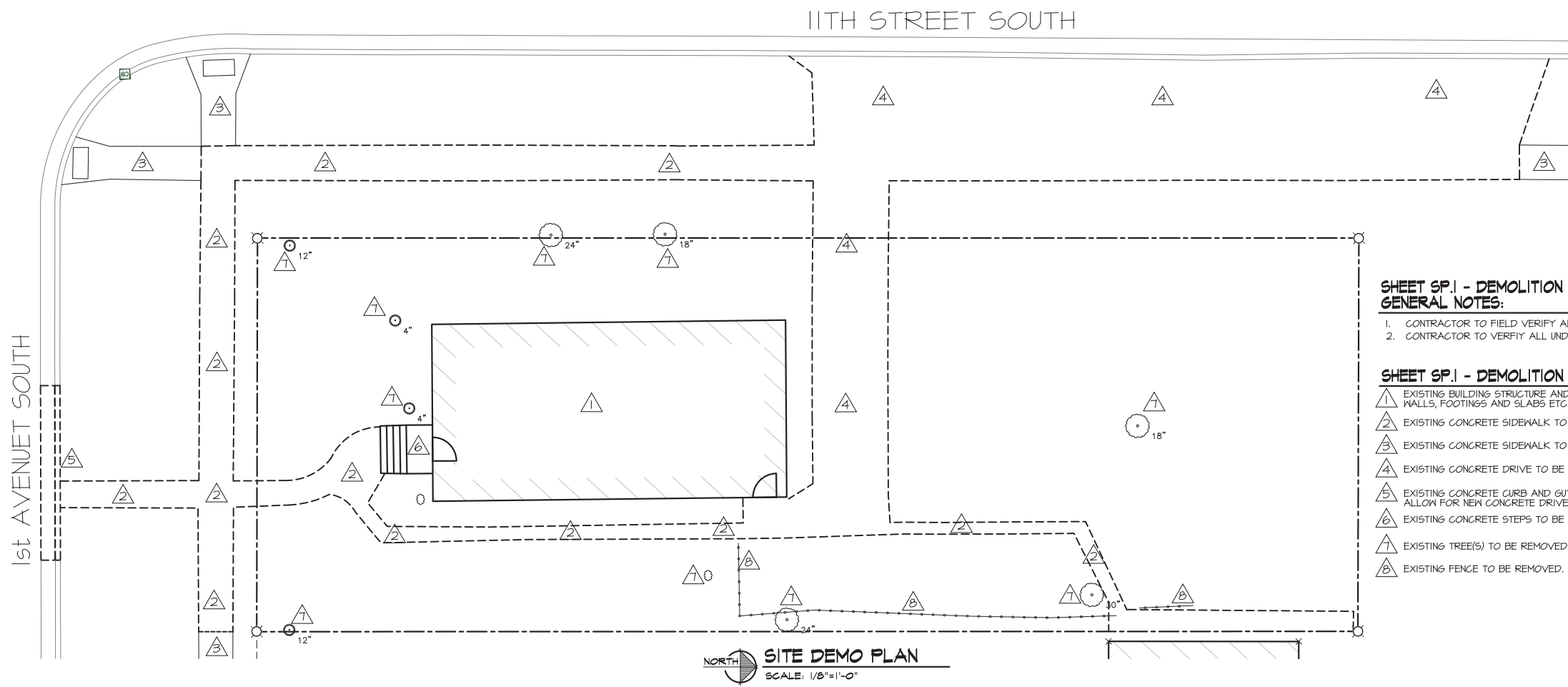
Job Number:  
2016.55

Sheet Name:  
COVER SHEET

Sheet Number:

CS



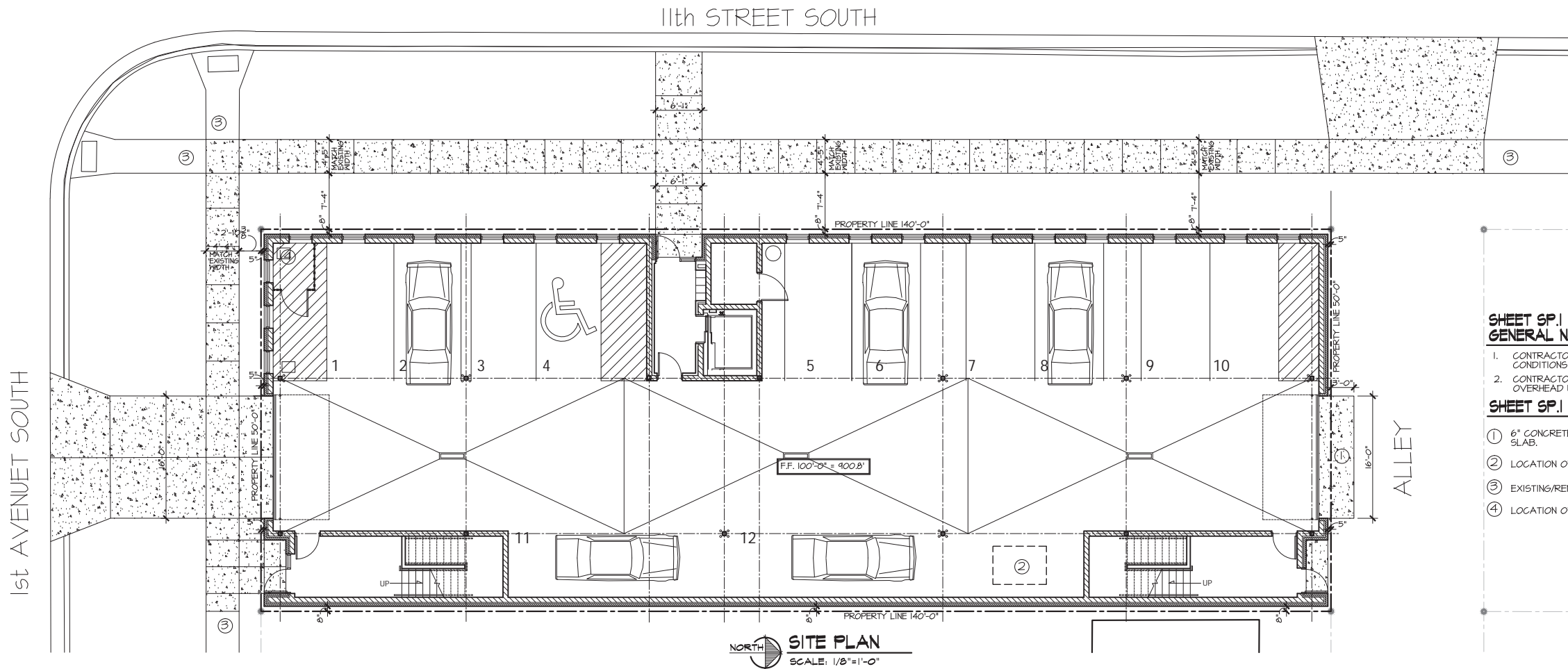


**SHEET SP.1 - DEMOLITION SITE PLAN**  
**GENERAL NOTES:**

1. CONTRACTOR TO FIELD VERIFY ALL EXISTING CONDITIONS.
2. CONTRACTOR TO VERIFY ALL UNDERGROUND AND OVERHEAD UTILITIES.

**SHEET SP.1 - DEMOLITION SITE PLAN NOTES:**

- 1. EXISTING BUILDING STRUCTURE AND ALL ITS CONCRETE FOUNDATION WALLS, FOOTINGS AND SLABS ETC. TO BE REMOVED.
- 2. EXISTING CONCRETE SIDEWALK TO BE REMOVED.
- 3. EXISTING CONCRETE SIDEWALK TO REMAIN.
- 4. EXISTING CONCRETE DRIVE TO BE REMOVED.
- 5. EXISTING CONCRETE CURB AND GUTTER TO BE REMOVED TO ALLOW FOR NEW CONCRETE DRIVEWAY.
- 6. EXISTING CONCRETE STEPS TO BE REMOVED.
- 7. EXISTING TREE(S) TO BE REMOVED.
- 8. EXISTING FENCE TO BE REMOVED.



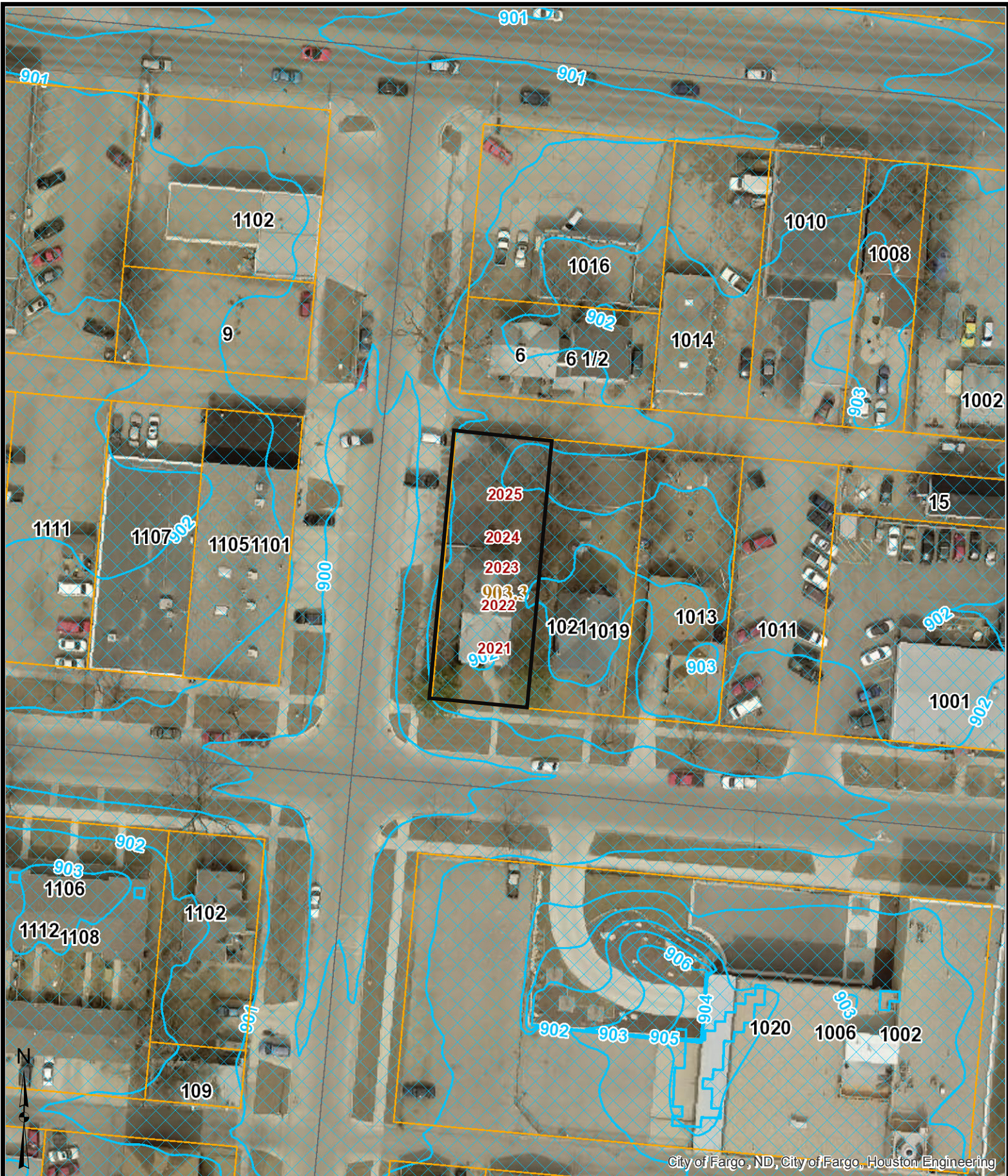
**SHEET SP.1 -SITE PLAN**  
**GENERAL NOTES:**

1. CONTRACTOR TO FIELD VERIFY ALL EXISTING CONDITIONS.
2. CONTRACTOR TO VERIFY ALL UNDERGROUND AND OVERHEAD UTILITIES.

**SHEET SP.1 SITE PLAN NOTES:**

- 1. 6" CONCRETE PARKING GARAGE TRANSITION SLAB.
- 2. LOCATION OF DUMPSTER.
- 3. EXISTING/REMAINING CONCRETE SIDEWALK.
- 4. LOCATION OF SPRINKLER RISER.





City of Fargo, ND, City of Fargo, Houston Engineering

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.

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

