



PLANNING AND DEVELOPMENT

200 Third Street North

Fargo, North Dakota 58102

Phone: (701) 241-1474

Fax: (701) 241-1526

E-Mail: planning@cityoffargo.com

www.cityoffargo.com

MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planner *AN*
DATE: May 18, 2016
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, May 24, 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. Thank you.

**BOARD OF ADJUSTMENT
Tuesday, May 24, 2016 9:00 a.m.
City Commission Room
AGENDA**

1. Approve Minutes of October 27, 2015 Meeting
2. Old Business
3. New Business
 - a) Appeal of an Administrative Decision
Appellant claims that staff erred in not allowing firearm sales as a home occupation.
4. Other Business
5. Adjournment

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. 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:

October 27, 2015

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, October 27, 2015.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Dominic Fischer, Russell Ford-Dunker, Michael Love, Mark Lundberg

Absent: None

Chair Wendel-Daub called the meeting to order.

Item 1: Approve Order of Agenda

Member Fischer moved the Order of Agenda be approved as presented. Second by Member Love. All Members present voted aye and the motion was declared carried.

Item 2: Approval of Minutes: Regular Meeting of September 22, 2015

Member Ford-Dunker moved the minutes of the September 22, 2015 Board of Adjustment meeting be approved. Second by Member Lundberg. All Members present voted aye and the motion was declared carried.

Item 3: Old Business

a) Variance Request – 3333 39th Street South

Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow earth fill around a proposed building to be approximately 1.5 feet lower than what is required by the City's Floodproofing Code: DENIED

A Hearing had been set for August 25, 2015. At the August 25, 2015 meeting the Hearing was continued to September 22, 2015. At the September 22, 2015 meeting the Hearing was continued to this date and time.

Planner Aaron Nelson presented the staff report and background on this item. He noted the continuation from the August meeting provided the applicant time to submit additional technical documentation requested by the City's Engineering Department. Mr. Nelson stated that based on the criteria and guidelines used by staff for review of this proposal, staff is recommending denial for the requested variance.

City Division Engineer Nathan Boerboom stated he concurs with staff and supports the recommendation for denial.

Applicant representative Elissa Novotny Leino spoke on behalf of the requested variance.

Board discussion began regarding the possible recommendations that could be voted on today and the options the applicant can pursue.

Member Ford-Dunker moved the findings of staff be accepted and to withhold approval of the requested variance to allow earth fill around a proposed building to be approximately 1.5 feet lower than what is required by the City's Floodproofing Code, and to allow the matter to be taken up by the Board of City Commissioners, based on analysis of those criteria contained in Flood Plain Management Code (FMC) Section 21-0603. Second by Member Love. Upon call of the roll Members Love and Ford-Dunker voted aye. Members Fischer, Lundberg, and Wendel-Daub voted nay. The motion was declared failed and the variance was declared denied for lack of a supermajority.

Item 4: Other Business

No other business was discussed.

Item 5: Adjournment:

Member Love moved to adjourn the meeting at 9:28 a.m. Second by Member Fischer. All Members present voted aye and the motion was declared carried.

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

Item No: 3.a

Date: April 19, 2016

Appellant: Andrew Curtis

Status: Board of Adjustment – April 26, 2016

Summary of Record

Background:

The applicant, Andrew Curtis, met with Planning Department staff on December 30, 2015 in order to discuss his plans to apply for a federal firearms license in order to process internet firearms sales within his home. The applicant explained to staff that this type of license would allow him to facilitate the online sale and purchase of firearms between two parties. Essentially, he would be the middle-man between a buyer and seller by conducting background checks, keeping records, and filing the appropriate paperwork in accordance with federal law. Once these federal requirements have been satisfied, the seller of the firearm would ship it to the applicant's house, and the buyer of the firearm would then be able to stop by the house to take ownership of the firearm.

Staff told the applicant that this type of business would be considered a *home occupation*, and that this type of home occupation would not be permitted, in accordance with the home occupation standards of the LDC which prohibits the sale of firearms and/or ammunition as a home occupation.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the federal agency that administers federal firearm licensing. The ATF reviews firearm licensing applications for conformance with federal laws. It is staff's understanding that the ATF does not deny firearm license applications based on compliance issues with state or local laws, but the ATF does work to make state and local governments aware of such potential issues.

Claim of Appellant:

The applicant, Andrew Curtis, submitted an appeal of an administrative decision claiming that staff erred in determining that online firearm sales is prohibited as a home occupation. The applicant claims that state law supersedes the City's ability to prohibit firearm sales as a home occupation.

Exhibits:

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

- Exhibit 1 – Legal Opinion from Fargo City Attorney, Erik Johnson
- Exhibit 2 – The applicant's appeal application with attachments
- Exhibit 3 – Zoning Map for the area of 3420 Birdie Street North
- Exhibit 4 – Parcel Report for the property at 3420 Birdie Street North

Relevant Facts

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

1. The applicant lives at 3420 Birdie Street North, which is where the applicant wishes to conduct the processing/sale of firearms. *Exhibit 2*
2. The property at 3420 Birdie Street North is located within the SR-2 (Single-Dwelling Residential) zoning district. *Exhibit 3*
3. The property at 3420 Birdie Street North is currently used for single-dwelling household living. *Exhibit 4*

Relevant Code Provisions

LDC Section 20-0403(C) – Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

LDC Section 20-0403(C)(4) – Allowed Uses

The home occupation regulations of this Land Development Code establish performance standards for accessory home occupations rather than defining a list of allowed home occupations. Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited.

LDC Section 20-0403(C)(5)(e) – Prohibited Uses

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Staff Analysis

During staff's review of the applicant's request to operate a firearm sales business at 3420 Birdie Street North, it was determined that this type of activity would be reviewed as a Home Occupation, since the property is used for household living and is located within the SR-2 zoning district. Retail sales and services of any kind are prohibited as a principal use within the SR-2 zoning district. However, the LDC allows for some types of business uses as "home occupations" which are allowable as an accessory use to household living. Section 20-0403(C)(4) details the types of home occupations that are allowed as accessory uses, stating that, "Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited" [emphasis added]. Subsequently, Section 20-0403(C)(5) goes on to list the types of uses that are specifically prohibited, which includes the sale of firearms. Accordingly, staff determined that the operation of a firearm sales business at 3420 Birdie Street North would not be allowable.

As referenced above, the applicant appealed staff's decision to not allow the operation of a firearm sales business as a home occupation, arguing that state law restricts the City's ability to prevent the operation of a firearm sales business as a home occupation. Regarding this argument, staff turned to the City Attorney's Office to provide a legal opinion on the basis of the applicant's claim. The City Attorney then rendered a legal opinion which concludes that state law does not prohibit the City from enacting such zoning ordinances and that the City's prohibition on firearm sales as an accessory home occupation is valid. The City Attorney's legal opinion is attached to this staff report (Exhibit 1) and is included in the staff analysis by reference.

Staff Recommendation

Staff recommends that the Board of Adjustment affirm staff's decision to prohibit the processing/sale of firearms as a home occupation.



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

April 18, 2016

Jim Gilmour
Director of Planning and Development
City Hall
200 Third Street North
Fargo, ND 58102

RE: Appeal to Andrew Curtis to Board of Adjustment-Home Occupations

Dear Mr. Gilmour:

This opinion concerns Andrew Curtis' appeal 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.

Factual and Procedural Background

Andrew Curtis is a Fargo resident residing at 3420 Birdie Street North in the City of Fargo. Mr. Curtis is attempting to obtain a federal firearm license from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in order to process internet firearm sale transactions from his residence in the City of Fargo. Mr. Curtis has described the contemplated business operating in the following manner: a buyer would order the firearm online and the firearm would be shipped to the Mr. Curtis's residence. The buyer would then proceed to Mr. Curtis's residence where the buyer would complete necessary paperwork and a background check for the firearm transaction. Once all of the paperwork and other federal requirements were satisfied, Mr. Curtis would provide the buyer with the firearm at his residence. In short, Mr. Curtis wishes to sell firearms out of his residence in the City of Fargo.

The ATF raised concerns to Mr. Curtis about the City of Fargo's zoning ordinances prohibiting the home occupation of selling firearms. Thereafter, Mr. Curtis requested

permission from a City of Fargo administrative official to operate his contemplated business as a home occupation (i.e., from his residence). The administrative official informed Mr. Curtis that Mr. Curtis cannot operate an internet firearm sales business from his residence as Fargo Municipal Code Ordinance § 20-0403(C)(5)(e) prohibits the sale of firearms and/or ammunition as a home occupation.

On March 9, 2016, Mr. Curtis filed an Appeal of an Administrative Decision which appealed the administrative official's decision that he could not operate an internet firearm sales business out of his residence in the City of Fargo. Mr. Curtis argues in his Appeal that North Dakota Century Code provision 62.1-01-03 prohibits the City of Fargo from enacting a zoning ordinance such as Fargo Municipal Code section 20-0403(C)(5)(e). For the reasons set forth below, it is my opinion that the City of Fargo had the authority to enact Fargo Municipal Code § 20-0403(C)(5)(e) and that the Board of Adjustment should affirm the administrative official's decision to not allow Mr. Curtis to operate his contemplated business at his residence in the City of Fargo.

Opinion

Municipalities, such as the City of Fargo, are allowed under North Dakota law to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. See N.D.C.C. § 40-47-01; see also N.D.C.C. § 40-05.1-06(11)(providing that cities such as Fargo have the power to provide for zoning, planning, and subdivision of public or private property within city limits). Municipalities may regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. N.D.C.C. § 40-47-01. All zoning ordinances must be designed to promote the health and general welfare of the community. N.D.C.C. § 40-47-03(3). All zoning ordinances must also be reasonable. Mertz v. City of Elgin, Grand County, 2011 ND 148, ¶ 7, 800 N.W.2d 710. A zoning ordinance will be invalidated if it bears no reasonable relationship to a legitimate government purpose, that is arbitrary, or that deprives a property owner of all or substantially all reasonable uses of land. Id. Unless shown to be unreasonable or arbitrary, an ordinance is presumed to be valid. Id.

Fargo Municipal Code section 20-0403(C) provides use regulations for areas zoned as residential. Specifically, the section provides home occupation regulations which are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. There are specific home occupation uses which are prohibited under section 20-0403(C)(5). Namely, as it relates to this matter, section 20-0403(C)(5)(e) provides:

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Effectively, section 20-0403(C)(5)(e) prohibits Mr. Curtis from operating his contemplated business selling firearms from his residence in the City of Fargo. While Mr. Curtis appears to acknowledge that section 20-0403 prohibits his intended use of his residence to sell firearms, he believes that section 20-0403 is invalid pursuant to North Dakota Century Code provision 62.1-01-03. That provision provides:

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

Mr. Curtis's argument is that Fargo Municipal Code section 20-0403(C)(5)(e) which prohibits the sale of firearms as a home occupation is an ordinance relating to the purchase and sale of firearms which is more restrictive than state law and therefore the ordinance is void.

Mr. Curtis does not point to any state statute that would permit him to sell firearms as a home occupation out of his residence. Instead, as laid out above, the North Dakota legislature has expressly provided authority to municipalities, such as the City of Fargo, to enact zoning ordinances which restrict the use of home residences. Fargo Municipal Code section 20-0403(C)(5)(e) promotes the health, safety, and general welfare of the community by not allowing residents to have the home occupation of selling firearms. The City of Fargo, in enacting the ordinance, did not act arbitrarily and the ordinance bears a reasonable relationship to a legitimate government interest (the health, safety, and general welfare of the community). Further, the ordinance does not deprive Mr. Curtis of all or substantially all reasonable uses of his land, as Mr. Curtis may use the land as his residence.

This opinion is supported by other jurisdictions who have considered similar situations with nearly identical state statutes. For instance, in a Kentucky case, a firearms dealer argued that a city zoning ordinance which prevented him from obtaining licenses to establish gun shops at certain locations within commercial districts was preempted by a state statute providing that no city could occupy any part of the field of regulations of the transfer of firearms. See Peter Garrett Gunsmith, Inc. v. City of Dayton, 98 S.W.3d 517, 518-19 (Ky. Ct. App. 2002). The court found that the city zoning ordinance was valid because zoning ordinances which regulation the locations where gun shop businesses may operate, do not occupy any part of the field of regulation of the transfer, ownership, possession, carrying or

transportation of firearms. Id. at 520. Instead, zoning ordinances represent regulations in the field of land use which is a field of regulation that cities have authority to control. Id.

Likewise, in a case in Michigan federal court, a firearms dealer sought review of an ATF decision denying his application for a federal firearms license upon the ground that dealing firearms from a dealer's home would have been prohibited by the city's zoning laws. Morgan v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, 473 F.Supp.2d 756 (E.D. Mich. Feb. 9, 2007). The firearms dealer argued that a Michigan statute which provided that a local unit of government shall not impose, enact, or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms except as provided by federal or state law prohibited the city from passing zoning ordinances which had the effect of not allowing him to sell firearms from his residence. Id. at 768. The Court disagreed with the firearms dealer and found that the city had the power, despite the Michigan state law, to pass zoning ordinances which had the effect of prohibiting the firearm dealer from selling firearms from his residence. Id. at 768-69.

In sum, the North Dakota Century Code provides that municipalities, such as the City of Fargo, have the power to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. Further, there is no North Dakota law which permits a person to operate a firearm selling business from his residence or to have firearm sales as a home occupation. It is my opinion that Fargo Municipal Code section 20-0403(C)(5)(e) is valid and not prohibited by state law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erik R. Johnson', with a stylized flourish at the end.

Erik R. Johnson

ERJ/lmw



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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	Representation Information (if applicable)
Name (printed): <u>Andrew Curtis</u>	Name (printed): _____
Address: <u>3420 Birdie St N</u>	Address: _____
Primary Phone: <u>701-541-0723</u>	Company: _____
Alternative Phone: <u>701-237-1377</u>	Primary Phone: _____
Fax: _____	Alternative Phone: _____
Email: <u>andrewcurtisfargo@icloud.com</u>	Fax: _____
	Email: _____
	<input type="checkbox"/> Same as property owner

Location of property involved in the appealed decision (if applicable)
Address: <u>3420 Birdie St N</u>
Legal Description (attach separate sheet if more space is needed): _____

Item for Appeal (attach separate sheet if more space is needed)
<u>Sec 20-0403 (5e) Home Occupations Prohibited Uses</u>

Reason for Appeal (attach separate sheet if more space is needed)
<u>N.D. Title 62.1-01-03 Limitation on authority of Political Subdivision regarding firearms.</u>



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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):

Andrew Carter

Date:

3-9-16

Representative (Signature):

Date:

Office Use Only

Date Filed:

3-9-16

Pre-Application Meeting Date:

Application Complete:

☐

Yes

☐

No

Reviewed By:



Land Development Code

**Chapter 20 - City Planning and Zoning
Fargo Municipal Code**

*Effective February 17, 1998
Re-published August 2009*

- (4) Notwithstanding any other provisions of this section, any fence located completely within the required building setback for the zoning district is subject only to the height limitations as are buildings within that zoning district.

7. Building Coverage

Building coverage of detached accessory structures may not exceed that of the principal building; provided, however, that in MR zoning districts, garages accessory to multi-dwelling structures may not exceed 130 percent of the building coverage of the principal building, and in a UMU zoning district building coverage of detached accessory structures may not exceed 50 percent of the building coverage of the principal building, and in the SR-0 district, building coverage of detached accessory structures may not exceed 150 percent of the building coverage of the principal building and in SR-0, SR-1 and SR-2 districts when lot sizes are equal to or greater than 40,000 square feet in size, building coverage of detached accessory structures may not exceed the size as shown on Table 20-0403 below. Accessory buildings and structures shall be included in the calculation of total building coverage. In MR zoning districts, as to multi-dwelling structures with garages as accessory buildings, building coverage may be allowed up to 37.5 percent, provided there is a significant shared site amenity to be shared among the tenants included on the landscaping plan submitted during the building permit process. Examples of such amenities: gazebo with barbeque pit, volleyball court, basketball court, tot-lot/playground, swimming pool, or such other shared amenities as approved by the Zoning Administrator.

Table 20-0403

Lot Size	Maximum size of Accessory Structure
40,000 sq. ft. to 2 Ac.	4,000 sq. ft.
+ 2 Ac. to 3 Ac.	4,500 sq. ft.
+ 3 Ac. to 4 Ac.	5,000 sq. ft.
+ 4 Ac. to 5 Ac.	5,500 sq. ft.
+ 5 Ac. to 10 Ac.	6,000 sq. ft.

C. Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

1. Types of Home Occupations

There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.

2. Minor Home Occupations - Defined

A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Minor Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants personal care and grooming services, and employees of off-site businesses who work from their home. In addition, tutors, such as piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be deemed minor home occupations.

3. Major Home Occupations - Defined

A Major Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work and that has a nonresident employee and/or customers coming to the site. Examples are counseling, tutoring, and hair cutting and styling.

4. Allowed Uses

The home occupation regulations of this Land Development Code establish performance standards for accessory home occupations rather than defining a list of allowed home occupations. Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited.

5. Prohibited Uses

a. Vehicle and Large Equipment Repair

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. Mortuaries

Mortuaries are not allowed as home occupations.

d. Animal Care, Grooming, or Boarding Facilities

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities.

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not

allowed as a home occupation.

6. Signs

No more than one sign shall be allowed on the site of a home occupation. The maximum size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

7. Outdoor Activities

All activities and storage areas must be conducted in completely enclosed structures.

8. Exterior Appearance

There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

9. Operational Impacts

No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

10. Trucks and Vehicles

No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

11. Deliveries

Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

12. Major Home Occupations

The following regulations apply only to Major Home Occupations.

a. Conditional Use Permits

No Major Home Occupation is allowed unless it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Major Home Occupation granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

b. Employees

A maximum of one nonresident employee is allowed with a Major Home Occupation provided no customers come to the site. Major Home Occupations that have customers coming to the site are not allowed to have nonresident employees. For the purpose of

this provision, the term “nonresident employee” includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

c. Customers

Customers may visit the site only during the hours of 7 a.m. to 9 p.m., and no more than 12 customers or clients may visit the site in any single day.

d. Number

No more than one Major Home Occupation may be conducted on a single site. A Minor Home Occupation may be conducted on the site of a Major Home Occupation.

**TITLE 62.1
WEAPONS**

**CHAPTER 62.1-01
DEFINITIONS - GENERAL PROVISIONS**

62.1-01-01. General definitions.

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage, then the term includes the device for an individual who is prohibited from possessing a firearm under this title. However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon. For a felon who is not sentenced under section 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:
 - a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
 - b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
 - c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.
9. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
10. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
11. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
12. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
13. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.
15. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
16. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime.

1. Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or dealers, retained for use, or destroyed.
2. Notwithstanding any other provision of law; and subject to the duty to return firearms to innocent owners under this section, section 29-31.1-02, and as provided in chapter 29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement agency of this state or a political subdivision of this state, including the game and fish department, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be disposed of as provided in this section. Except as provided in chapter 29-01 for stolen property, this section does not apply to firearms that are seized or confiscated and disposed of under chapter 20.1-10.
3. a. Before the disposal of any firearm under this section, the agency with custody of the firearm shall use its best efforts to determine if the firearm has been lost by, or

- stolen or otherwise unlawfully obtained from, an innocent owner and, if so, shall provide notification to the innocent owner of its custody of the firearm. An innocent owner may also notify the agency to claim a firearm.
- b. After notification, the agency shall return the firearm to its innocent owner provided the owner submits sufficient proof of ownership, as determined by the agency, and pays the costs, if any, of returning the firearm to the innocent owner. Costs are limited to the actual costs of shipping to the innocent owner and associated costs from any transfer and background check fees charged when delivering the firearm to the innocent owner.
 - c. If six months elapse after notification to the innocent owner of the custody of the firearm by an agency and the innocent owner fails to bear the costs of return of his or her firearm or fails to respond to the agency notification, or if six months elapse after notice of a claim by an innocent owner and the innocent owner fails to bear the costs of return of the innocent owner's firearm or take away the innocent owner's firearm, then the agency shall dispose of the firearm as provided in this section.
4. a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency shall dispose of the firearms that it receives under subsection 2 by sale at public auction to persons that may lawfully possess a firearm and persons licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the terms of the licenses.
- b. The auction required by this subsection may occur online on a rolling basis or at live events, but in no event may the auction occur less frequently than once every year during any time the agency has an inventory of saleable firearms. The agency shall establish a procedure to notify persons of its auctions.
 - c. The agency may not retain proceeds above that which are necessary to cover the costs of administering this subsection, with any surplus to be transferred to the general fund of the jurisdiction in which the agency is located, provided that an agency may be reimbursed for any firearms formerly in use by the agency that are sold under this section.
 - d. Employees of the agency are not eligible to bid on the firearms at an auction conducted under this subsection, and except for the amounts authorized under subdivision c of this subsection, neither the agency nor its employees may retain any proceeds from any sale required by this subsection, nor may the agency or its employees retain any firearm required to be sold under this subsection.
5. a. The requirements of subsection 4 do not apply to a firearm if there are not any bids from eligible persons received within six months from when bidding opened on the firearm, or if the agency director, sheriff, chief of police, or a designee of the official certifies that the firearm is unsafe for use because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of the firearm. The agency director, sheriff, chief of police, or a designee of the official, may transfer any of these firearms to the attorney general's crime laboratory for training or experimental purposes, or to a museum or historical society that displays these items to the public and is lawfully eligible to receive the firearm, or the firearm may be destroyed. The requirements of subsection 4 do not apply to a firearm and an agency director, sheriff, chief of police, or a designee of the official may destroy the firearm, if:
- (1) The firearm was used in a violent crime, in an accidental shooting, or a self-inflicted shooting resulting in the death of an individual;
 - (2) There is not a claim for the firearm by an innocent owner; and
 - (3) A family member of the deceased individual makes a written request for the destruction of the firearm.
- b. Agencies subject to the provisions of this subsection may establish a procedure to destroy firearms and may expend necessary funds for that purpose.

6. All agencies subject to the provisions of this section shall keep records of the firearms acquired and disposed of as provided in this section, as well as the proceeds of the sales and the disbursement of the proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.
7. Neither the state nor any political subdivision of the state, nor any of their officers, agents, and employees, is liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale or disposal of a firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of the state or political subdivision acted with gross negligence or recklessness.
8. As used in this section, the term "innocent owner" means a person who:
 - a. Did not beforehand know or in the exercise of ordinary care would not have known of the conduct which caused that person's firearm to be forfeited, seized, or abandoned to any law enforcement agency of the state or any political subdivision of the state, including the game and fish department;
 - b. Did not participate in the commission of a crime or delinquent act involving that person's firearm;
 - c. Legally owned and presently owns the firearm forfeited, seized, or abandoned; and
 - d. Is authorized by state and federal law to receive and possess his or her firearm.

62.1-01-03. Limitation on authority of political subdivision regarding firearms.

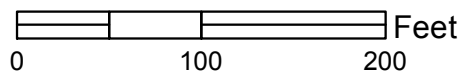
A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.



Zoning Districts

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

3420 Birdie Street North





Parcel Information Report

Parcel Number: 01-1005-00020-000

Exhibit 4

General Information

Segment Id: 1
Owner 1: CURTIS, ANDREW E & BECKY L
Owner 2:
Property Address: 3420 BIRDIE ST N
Mailing Address: 3420 BIRDIE ST N FARGO, ND 58102
Addition Name: Golf Course 5th
Block: 1
Lot: 2

Additional Description:

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: Longfellow

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$45,400.00	\$125,800.00	\$171,200.00

Building Information

Year Built:	1977	No. of Apartment Units:	
Total Building SqFt:	892	Residential Story Height:	4 (Bi-Level)

Lot Size

Front Width:	75.13	Land Use:	R (Residential)
Back Width:	75.00	Property Type:	1 (Single Family)
Depth Side 1:	127.81		
Depth Side 2:	130.00	Square Footage:	9733.00

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-2

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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