

**MEMORANDUM**

**TO:** Board of Adjustment  
**FROM:** Maggie Squyer, Assistant Planner *MS*  
Aaron Nelson, Planning Coordinator  
**DATE:** May 19, 2020  
**RE:** Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be a virtual meeting held on Tuesday, May 26, 2020 at 9:00 a.m. in the City Commission Chambers at Fargo City Hall and online. If you are not able to participate in the meeting, please contact staff at (701) 241-1474 or [planning@FargoND.gov](mailto:planning@FargoND.gov). Thank you.

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**BOARD OF ADJUSTMENT**  
**Tuesday, May 26, 2020 9:00 a.m.**  
**Commission Chambers & Online**  
**AGENDA**

1. Approve Minutes of November 26, 2019 Meeting
2. New Business
  - a) Variance Request – 2402 Lilac Lane  
*Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow a detached garage to encroach into the required front setback in the SR-2, Single-Dwelling Residential, zoning district.*
  - b) Variance Request – 2921 1<sup>st</sup> Avenue North  
*Request for a variance of Section 20-0502 of the LDC. The requested variance is to allow a building addition to encroach into the required interior-side setback in the LI, Limited Industrial, zoning district.*
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.FargoND.gov/streaming](http://www.FargoND.gov/streaming). They are rebroadcast each Tuesday at 9:00 a.m. for one month following the meeting.

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

## **BOARD OF ADJUSTMENT MINUTES**

**Regular Meeting:**

**Tuesday, November 26, 2019**

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 9:00 a.m., Tuesday, November 26, 2019.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Michael Love, Mike Mitchell

Absent: Jared Heller, Russell Ford-Dunker

Chair Love called the meeting to order.

**Item 1: Approval of Minutes: Regular Meeting of October 22, 2019**

Member Wendel-Daub moved the minutes of the October 22, 2019 Board of Adjustment meeting be approved. Second by Member Boreen. All Members present voted aye and the motion was declared carried.

**Item 2: New Business**

**a) Variance Request – 1350 2nd Street North: APPROVED**

**Request for a variance of Section 20-0501 of the Land Development Code. The requested variance is to allow an attached garage to encroach into the required rear and interior-side setback within the SR-2, Single-Dwelling Residential zoning district.**

Assistant Planner Maggie Squyer presented the staff report and reviewed the criteria used during staff's analysis of the application. Ms. Squyer stated staff is recommending denial, as the review criteria (a) and (c) have not been met. She also noted that letters in support of the project were submitted to the Board.

The Board discussed the setback requirement distances related to primary and accessory structures.

Applicant Tim Flakoll spoke on behalf of the application. He also provided additional documents to the Board.

Discussion continued on the percentage of building coverage allowed and the size and placement of the mudroom addition that would connect the proposed garage to the existing home.

Member Boreen moved the findings of staff be accepted and the variance to allow the proposed addition to encroach into the required rear and interior-side setback area in the SR-2, Single-Dwelling Residential zoning district be denied as requested. Second

by Member Mitchell. Upon call of the roll Members Mitchell and Love voted aye. Members Wendel-Daub and Boreen voted nay. Absent and not voting: Members Heller and Ford-Dunker. The motion died for lack of a majority.

Mark Thiede, RLE Architects, spoke on behalf of the application, confirming the plans submitted are the final plans.

Member Wendel-Daub moved to accept the project as presented and allow the proposed addition to encroach into the required rear and interior-side setback area in the SR-2, Single-Dwelling Residential zoning district. Second by Member Boreen. On call of the roll Members Mitchell, Wendel-Daub, Boreen, and Love voted aye. Absent and not voting: Members Heller and Ford-Dunker. The motion was declared carried.

**Item 3: Other Business**

Planning Coordinator Aaron Nelson presented the 2020 meeting dates for the Board of Adjustment.

Mr. Nelson also noted that Jared Heller has filled the alternate Board Member position and Member Mitchell accepted a regular Member position on the Board.

**Item 4: Adjournment:**

Member Wendel-Daub moved to adjourn the meeting at 9:47 a.m. Second by Member Mitchell. All Members present voted aye and the motion was declared carried.

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

**Item No:** 2.a **Date:** May 19, 2020

**Address:** 2402 Lilac Lane North

**Legal Description:** Lots 19 & 20, Block 11, Woodcrest Second Addition

**Owner(s)/Applicants:** Brian Martin

**Reason For Request:** A detached garage that would encroach into the required front setback

**Zoning District:** SR-2, Single-Dwelling Residential

**Status:** Board of Adjustment Public Hearing: May 26, 2020

SR-2 Dimensional Standards	Proposed Structure
<b>Setbacks:</b>	<b>Setbacks:</b>
<b>Front (southeast):</b> 30'	<b>Front (southeast):</b> 23'
<b>Interior-Side (north):</b> 3'	<b>Interior-Side (north):</b> 3'
<b>Interior-Side (south):</b> 3'	<b>Interior-Side (south):</b> 3'
<b>Rear (west):</b> 3'	<b>Rear (west):</b> 3'

### Background:

The applicant would like to construct a new detached garage which would be partially located within the required front setback. The property is located at 2402 Lilac Lane North and is within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0403 of the Land Development Code states that no accessory structure, other than a fence, wall or hedge may be located within a required front setback. The proposed plan would place the garage 23 feet away from the front (southeast) property line. Accordingly, the applicant is requesting a variance to allow the detached garage to encroach 7 feet into the required front setback.

### 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 legally described as Lots 19 & 20, Block 11, Woodcrest Second Addition. The property is 30,100 square feet in area, which is 22,100 square feet larger than the minimum required lot size of 8,000 square feet for the SR-2 zoning district. The shape of the lot could be considered atypical, as Lilac Lane North takes on a wider, rounded shape in front of 2402, creating a curved front property line. The applicant points out that the proposed garage design respects the style of the neighborhood by keeping the new garage in-line with the building façade of the neighbor to the south.

Ultimately, staff finds that the requested variance does not arise from conditions that are unique to the subject property. Although the lot shape is irregular due to the curved right-of-way, the total area of the lot provides space to construct a detached garage without encroaching into the front setback. **(Criteria NOT satisfied)**

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

Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. In accordance with the notification requirements of the LDC, neighboring property owners were provided

notice of the variance request. To date staff has not received any comments on this application.  
(Criteria satisfied)

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

The variance is being requested in order for the applicant to construct a new detached garage, which is a typical use permitted by-right in the SR-2 zoning district. Staff contends that no hardship exists as the property is capable of accommodating off-street parking while still meeting the requirements of the LDC. Ultimately, staff suggests that the strict application of the applicable standards should not constitute an unnecessary physical hardship because the subject property can be used for, and currently is used for, an allowed use without conflict with the LDC. (Criteria NOT satisfied)

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

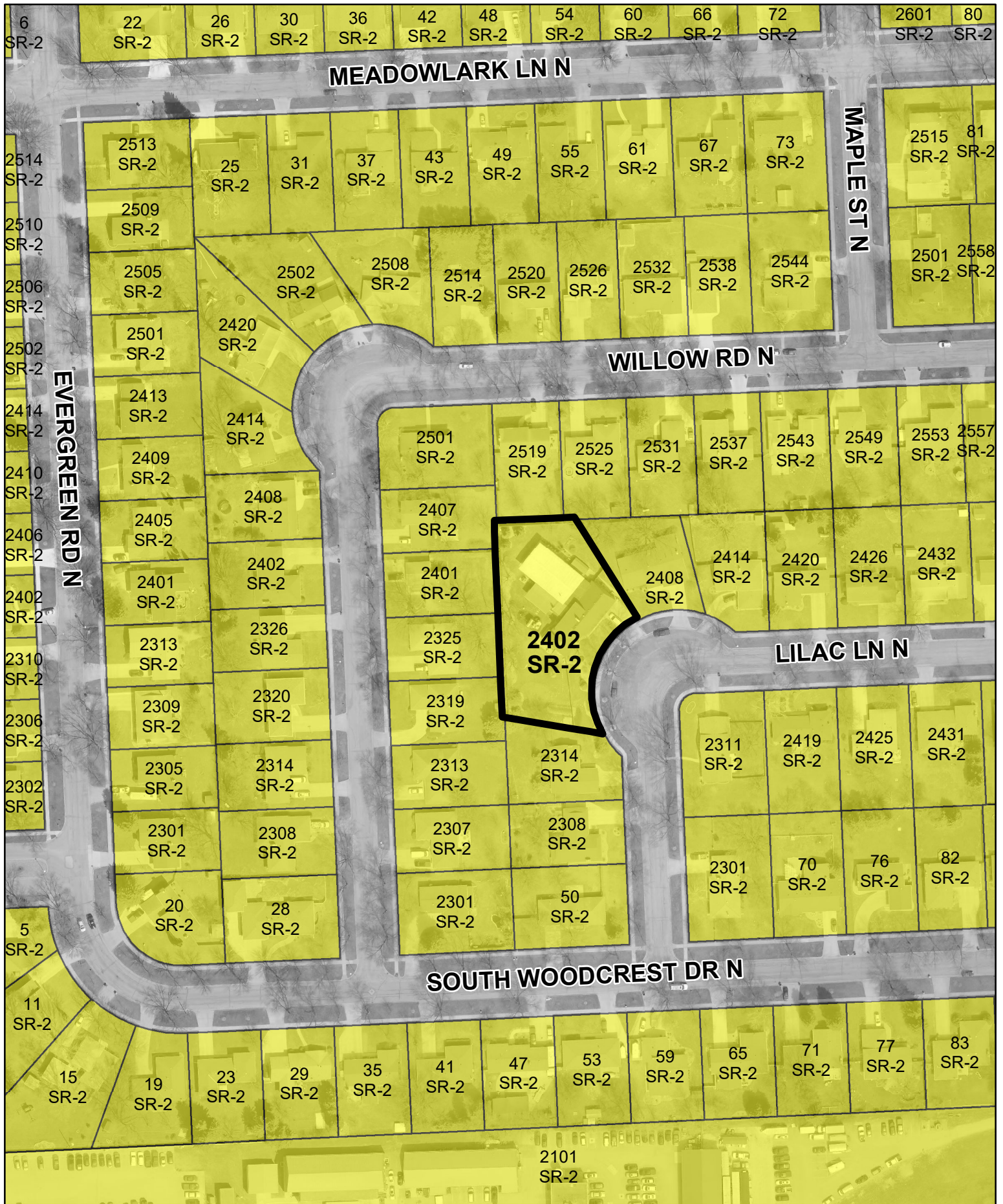
Staff has no data that would identify an adverse effect on public health, safety, or general welfare. No public health, safety, or general welfare issues have been identified. (Criteria satisfied)

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

As mentioned above, staff suggests that there is no hardship to overcome due to the fact that the property can be (and is currently) used for an allowed use without coming into conflict with applicable site development standards. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the detached garage as proposed by the applicant. (Criteria satisfied)

**Staff Recommendation:** “To accept the findings of staff and deny the requested variance to allow the proposed detached garage to encroach into the required front setback in the SR-2 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met.”





## 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>Brian Martin</u>	Name (printed): _____
Address: <u>2402 Lilac Lane Primary</u>	Address: _____
Phone: _____ Alternative _____	Primary Phone: _____
Phone: _____ Fax: _____	Alternative Phone: _____
_____	Fax: _____
Email: _____	Email: _____

Location of property requesting a variance:
Address: <u>2402 Lilac Lane</u>
Zoning District: <u>Longfellow SR2</u>
Legal Description: <u>Woodcrest Second, Lot 19-20, Block 11 Cass County</u>
_____

### Proposed Variance Information:

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

Setback requirement

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

Match front setback from when neighborhood was constructed and front of neighbors house

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.)

Attached is diagram which shows the approximate location of the proposed  
detached garage structure. As shown on the map, the offset and location is  
similar to all other properties within the neighborhood. The requested variance  
is approximately 5 feet which allows the structure to be slightly in front of the  
existing fence and also lined up with the face of the neighbors house. Once the  
garage structure is completed a storage shed will be removed on the north of  
the house.

**Criteria for Approval:**

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

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

The irregular shape of the property in the cud-a-sac requires that the detached garage move back. Keeping the front edge of the garage lined up with the neighbors house will provide consistency and match the existing neighborhood. The property arc line of the cud-a-sac

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

The residents in the neighborhood will not notice any change in the setback requirements as the requirements for setbacks during construction of the neighborhood in the 1970's was less. The goal is to match closely and build a structure which matches the style of the neighborhood.

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;

The irregular shape of the lot in the corner of the cud-a-sac along with the radius of the property arc does not allow the garage to meet the offset requirements on front offset. The proposed location meets the intent of the building setback lines of the neighborhood and is consistent with other structures on lots with similar configuration.

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

The variance will not affect the public health, safety, or general welfare.

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

Attached is diagram which shows the approximate location of the proposed detached garage structure. As shown on the map, the offset and location is similar to all other properties within the neighborhood. The requested variance is approximately 5 feet.





EXISTING STRUCTURE  
TO BE REMOVED

EXISTING PROPERTY  
LINE ARC

EXISTING FENCE

PROPOSED DRIVEWAY

APPROXIMATELY  
23 FEET

EXISTING FENCE  
10' MINIMUM INTERIOR  
SIDE

DETACHED GARAGE  
STRUCTURE  
26'X36'

NEIGHBORS HOUSE

FRONT SETBACK OF  
NEIGHBORS HOUSE  
EXTENDED

## 2402 LILAC LANE DETACHED GARAGE REQUEST





22-23' OFFSETS ON  
EXISTING STRUCTURES  
IN NEIGHBORHOOD ON  
SIMILAR SHAPED LOTS

# CITY OF FARGO - Board of Adjustment Variance Staff Report

<b>Item No:</b> 2.b	<b>Date:</b> May 19, 2020
<b>Address:</b> 2921 1 <sup>st</sup> Avenue North	
<b>Legal Description:</b> Lot 47, Teigen's Second Subdivision	
<b>Owner(s)/Applicants:</b> Mike Peterson	
<b>Reason For Request:</b> A building addition that would encroach into the required interior-side setback	
<b>Zoning District:</b> LI, Limited Industrial	
<b>Status:</b> Board of Adjustment Public Hearing: May 26, 2020	

SR-2 Dimensional Standards	Proposed Structure
<b>Setbacks:</b>	<b>Setbacks:</b>
<b>Front (south):</b> 20'	<b>Front (south):</b> 20'
<b>Interior-Side (east):</b> 10'	<b>Interior-Side (east):</b> 4'
<b>Interior-Side (west):</b> 10'	<b>Interior-Side (west):</b> 10'
<b>Rear (north):</b> 20'	<b>Rear (north):</b> 20'

## Background:

The applicant would like to construct a building addition that would be partially located within the required interior-side setback. The property is located at 2921 1<sup>st</sup> Avenue North and is within the LI, Limited Industrial, zoning district. Section 20-0501 of the Land Development Code requires that primary structures be set back at least 10 feet from the interior-side property line in the Limited Industrial zoning district. The proposed addition would be in line with the existing building on the subject property, which is only 4 feet away from the eastern interior-side lot line. Accordingly, the applicant is requesting a variance to allow the proposed building addition to encroach 6 feet into the required interior-side setback.

## 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 legally described as Lot 47, Teigen's Second Subdivision. The property is 21,360 square feet in area and has a lot width of 100 feet. The Land Development Code does not include any restrictions for the size of Limited Industrial lots.

One building currently exists on the subject property. The existing 5,040 square foot building was constructed in 1991, before the establishment of the current Land Development Code (LDC). When the LDC was adopted in 1998, the existing building became legally non-conforming due to its proximity to the eastern property line. Today, the applicant is requesting permission to construct an additional 2,268 square feet of indoor storage area in line with the existing building.

Ultimately, staff finds that the requested variance does not arise from conditions that are unique to the subject property. Although the existing building has a legally non-conforming interior-side setback, any new building addition could be constructed within the existing setback requirements for Limited Industrial zoning district. **(Criteria NOT satisfied)**

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

Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date staff has not received any comments on this application.

**(Criteria satisfied)**

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

The variance is being requested in order for the applicant to construct additional building space for indoor storage, which is a typical use permitted by right in the LI zoning district. Staff contends that no hardship exists as the property is capable of accommodating building additions while still meeting the requirements of the LDC.

Ultimately, staff suggests that the strict application of the applicable standards should not constitute an unnecessary physical hardship because the subject property can be used for, and currently is used for, an allowed use without conflict with the LDC. **(Criteria NOT satisfied)**

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

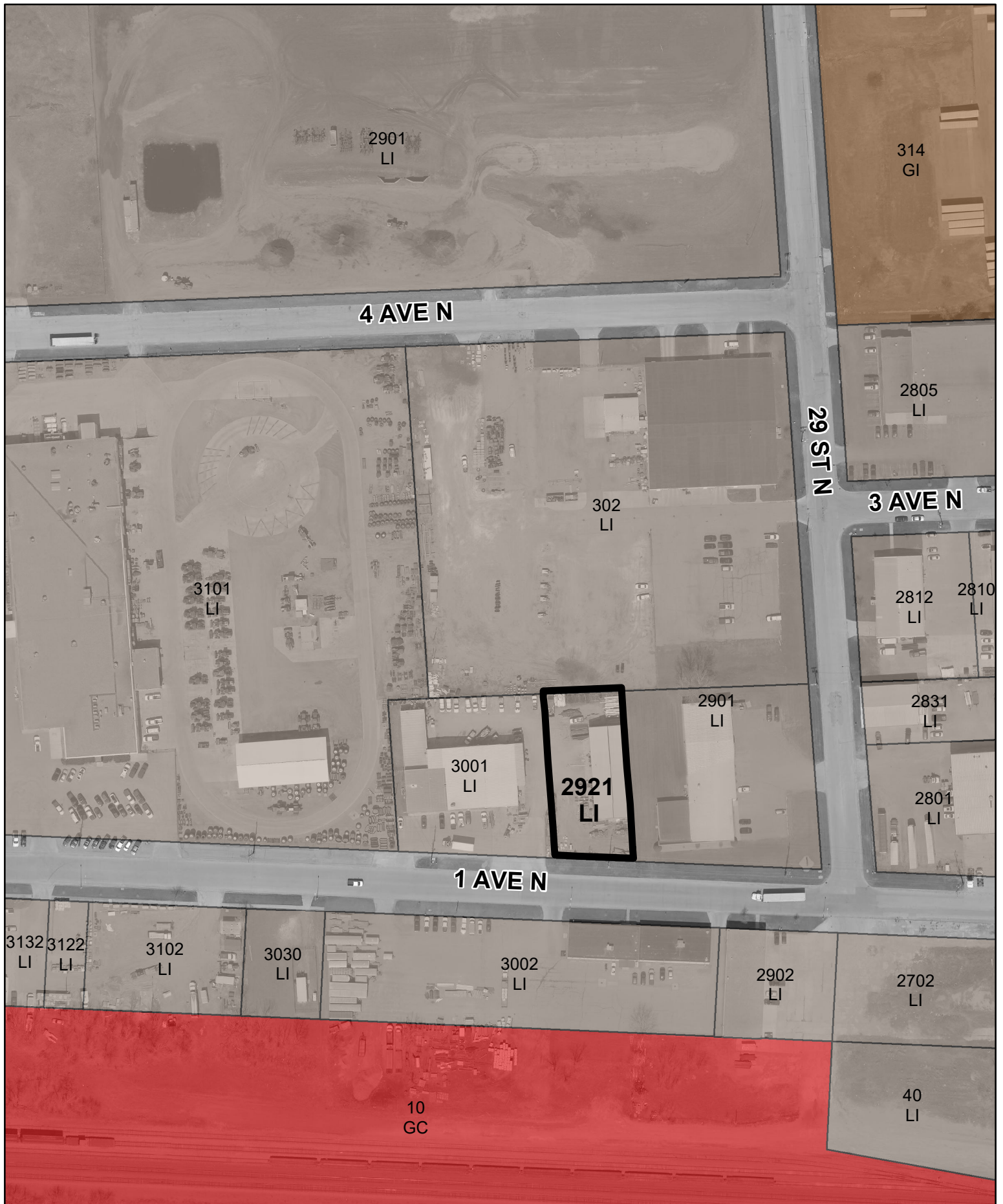
Staff has no data that would identify an adverse effect on public health, safety, or general welfare. No public health, safety, or general welfare issues have been identified. **(Criteria satisfied)**

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

As mentioned above, staff suggests that there is no hardship to overcome due to the fact that the property can be (and is currently) used for an allowed use without coming into conflict with applicable site development standards. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the attached garage as proposed by the applicant. **(Criteria satisfied)**

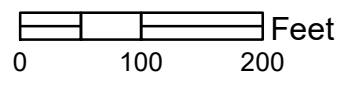
**Staff Recommendation:** “To accept the findings of staff and deny the requested variance to allow the proposed building addition to encroach into the required rear interior-side setback in the LI zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met.”





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

2921 1st Avenue North







## 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>MPeterson Properties LLC</u>	Name (printed): _____
Address: <u>7803 15th Street South</u>	Address: _____
Primary Phone: _____	Primary Phone: _____
Alternative Phone: _____	Alternative Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Location of property requesting a variance:
Address: <u>2921 1st Ave N</u>
Zoning District: <u>Commercial</u>
Legal Description: <u>Lot 47 Block 0 Addition Teigens 2nd Addition TEIGENS 2nd lot 47</u>
_____

### Proposed Variance Information:

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

The standard is 10 foot and mine is 4'

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.)

Adding one 28' X 42' addition to the South and one 26' X 42' addition to the North of existing storage building



**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;

Currently the existing building set back of 4' off the existing property line met the required setback at that time

We are requesting to match the existing building setback

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

The setback still puts our building within the our property and the adjacent property owner has no issues with this

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;

The setback is requested to keep the new addition(s) proportion with the existing building

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

There will be no adverse affect to public health, safety or general welfare due to the 4' setback

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

We are requesting a 6' variance to maintain the 10' setback



# ZALLES

1" = 20'-0"