THE CITY OF Fargo FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
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MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planning Coordinator AN
Maggie Squyer, Assistant Planner MS
DATE: June 18, 2019
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, June 25, 2019 at 9:00 a.m. in the Commission Chambers at the **NEW** Fargo City Hall. If you are not able to attend, please contact staff at (701) 241-1474 or planning@FargoND.gov. Thank you.

BOARD OF ADJUSTMENT
Tuesday, June 25, 2019 9:00 a.m.
Commission Chambers
AGENDA

1. Approve Minutes of May 28, 2019 Meeting

2. New Business
   a) Variance Request – 4288 Clubhouse Drive
   Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow a side yard fence to exceed height restrictions within the SR-3, Single-Dwelling Residential, zoning district.

3. Other Business

4. Adjournment

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

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

BOARD OF ADJUSTMENT
MINUTES

Regular Meeting: **Tuesday, May 28, 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, May 28, 2019.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Russell Ford-Dunker, Michael Love, Mark Lundberg

Absent: Mike Mitchell

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of April 23, 2019

Member Wendel-Daub moved the minutes of the April 23, 2019 Board of Adjustment meeting be approved. Second by Member Lundberg. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a) Variance Request – 610 18th Avenue South: APPROVED

Request for a variance of Section 20-0501 of the Land Development Code. The requested variance is to allow a building addition to encroach into the required interior-side setback area 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.

Applicant Joey Dawson spoke on behalf of the application.

Discussion was held on the distance of the proposed structure to the adjacent property structures. Member Boreen noted the need to follow code if a firewall is required depending on structure proximity.

Member Wendel-Daub moved to approve the variance to allow a building addition to encroach into the required interior-side setback area in the SR-2, Single-Dwelling Residential, zoning district. Second by Member Boreen. Upon call of the roll Members Wendel-Daub, Boreen, Lundberg, and Ford-Dunker voted aye. Member Love voted nay. Absent and not voting: Member Mitchell. The motion was declared carried.

Item 3: Other Business

a) Staff update on the Land Development Code Diagnostic Study and Core Neighborhoods Plan

Planning Coordinator Aaron Nelson provided an update on the Land Development Code Diagnostic Study. He reviewed the history of the study, the scope of work, and the timeline, noting that there is currently a Request for Proposal open.

Mr. Nelson also provided an overview of the Core Neighborhoods Plan, including the general study area, scope of work elements, and preliminary schedule timeline. He noted the high amount of interest in the study sharing that public and stakeholder participation would be very important.

The Board discussed how these plans would work with the Fargo Comprehensive GO2030 Plan and the need for the Land Development Code Diagnostic Study to work in communication with the Core Neighborhoods Plan.

Item 4: Adjournment:

Member Wendel-Daub moved to adjourn the meeting at 9:27 a.m. Second by Member Boreen. 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:** June 18, 2019
Address: 4288 Clubhouse Drive	
Legal Description: Lots 1, 2 & 4, Block 1, Osgood Villas 3rd Addition	
Owner(s)/Applicant: Todd and Tricia Reil	
Reason For Request: To construct a fence in the interior-side yard at a height higher than is currently permitted	
Zoning District: SR-3, Single Dwelling Residential	
Status: Board of Adjustment Public Hearing: June 25, 2019	

Accessory Development Standards	Proposed Accessory Development
Within Side Yard: 6.5'	**Within Side Yard:** **8'**

Background:
The applicants, Todd and Tricia Reil, would like to construct an 8-foot-high fence along their interior-side lot line at their home, located at 4288 Clubhouse Drive, within the SR-3, Single-Dwelling Residential, zoning district. The 8 foot fence would be 18 feet long and be placed 18 inches from the property line. Section 20-0403(B) of the Land Development Code (LDC) restricts the height of fences in the interior side yard to 6.5 feet tall. Therefore, the applicant is requesting to exceed the maximum fence height by 1.5 feet.

Criteria for Approval & Staff Analysis:

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

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

Staff finds that the requested variance arises from conditions that are unique to the subject property. As noted in the submitted application, the applicants would like to construct an 8-foot-tall fence along part of their interior side yard for the purpose of providing additional privacy from their neighbor. The applicants feel the need for this variance arises from the proximity of their neighbor's house to their shared property line. A 5-foot interior side setback and 15-foot rear yard setback are required in the SR-3, Single-Dwelling Residential zoning district. It appears the single-dwelling house at 4256 Clubhouse Drive encroaches into the required 5 foot interior-side setback. The close proximity of the neighbor's house to the shared property line creates conditions that are not traditionally found in the SR-3 zoning district where interior side and rear setbacks are typically met.

Consequently, staff finds that the requested variance arises from conditions that are unique to the subject property not ordinarily found in the SR-3 zoning district. **(Criteria 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 comments from the Osgood Villas Homeowners Association and Osgood First Addition Homeowners Association. The Homeowners Associations contend that an 8 foot fence could restrict the surrounding landscape view of affected

adjoining property owners of the Osgood Villas Development. The Osgood first Addition Homeowners Association also has a Declaration of Restrictive Covenants Amendment, filed in July of 2016, which states "no such fence shall exceed 6 feet in height nor be construct of chain link. Fencing on lot lines that are adjacent to the golf course must be of transparent design and shall be constructed as to not block the view corridors to the golf course from adjacent lots." The City of Fargo is not involved in the establishment of private covenants and is not responsible for enforcing restrictions outside of the Municipal Code. It is also worth noting that the proposed 8 foot fence would not be placed on a lot line adjacent to the golf course.

Staff also received a formal letter of protest from the property owners at 4256 Clubhouse Drive. In their letter, the homeowners at 4256 Clubhouse Drive contend that a variance in fence height would continue to affect issues already occurring between the shared property line, including safety and water drainage patterns, as well as respect for property lines and eventual ramifications for resale in the future. While the neighbor's concerns are legitimate, their letter states concerns that are more closely related to fence placement, rather than height. The placement of a fence at this location is not under review at this time. The placement of a fence may be a point of contention between the applicant and their neighbor at 4256 Clubhouse Drive, however staff has no reason to believe that the height of the proposed fence, as addressed by this variance request, would adversely affect the rights of the adjacent property owner.

Conversely, the applicant contends that the installation of an 8 foot fence would positively affect their neighbors at 4256 Clubhouse Drive because the extra height of the fence would prevent basketball shots from hitting their neighbor's house.

Based on information provided, staff finds that the neighboring property owners feel apprehensive about the installation of an 8-foot fence in their neighborhood. However, granting the variance would not adversely affect the rights of adjacent property owners. **(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;

According to the applicants, the variance is being requested in order to construct an 8-foot-tall fence. Specifically, the applicants state that the variance is needed to eliminate accidental basketball shots from hitting the neighbor's house at 4256 Clubhouse Drive.

Although the additional 1.5 feet of fencing may reduce the number of basketball shots hitting the neighbor's home, staff suggests that the construction of an 8-foot-tall fence is not necessary for the practical and customary use of the property. In other words, the inability to place an 8-foot-tall fence along the interior side property line does not diminish the owners' ability to fully use the property for traditional single-family residential purposes. Accordingly, staff finds that no unnecessary physical hardship exists. In addition, a fence up to 6.5 feet in height may be located along the interior-side property line without coming into conflict with applicable site development standards.

Therefore, 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 typical residential purposes without coming into conflict with applicable development standards. **(Criteria NOT satisfied)**

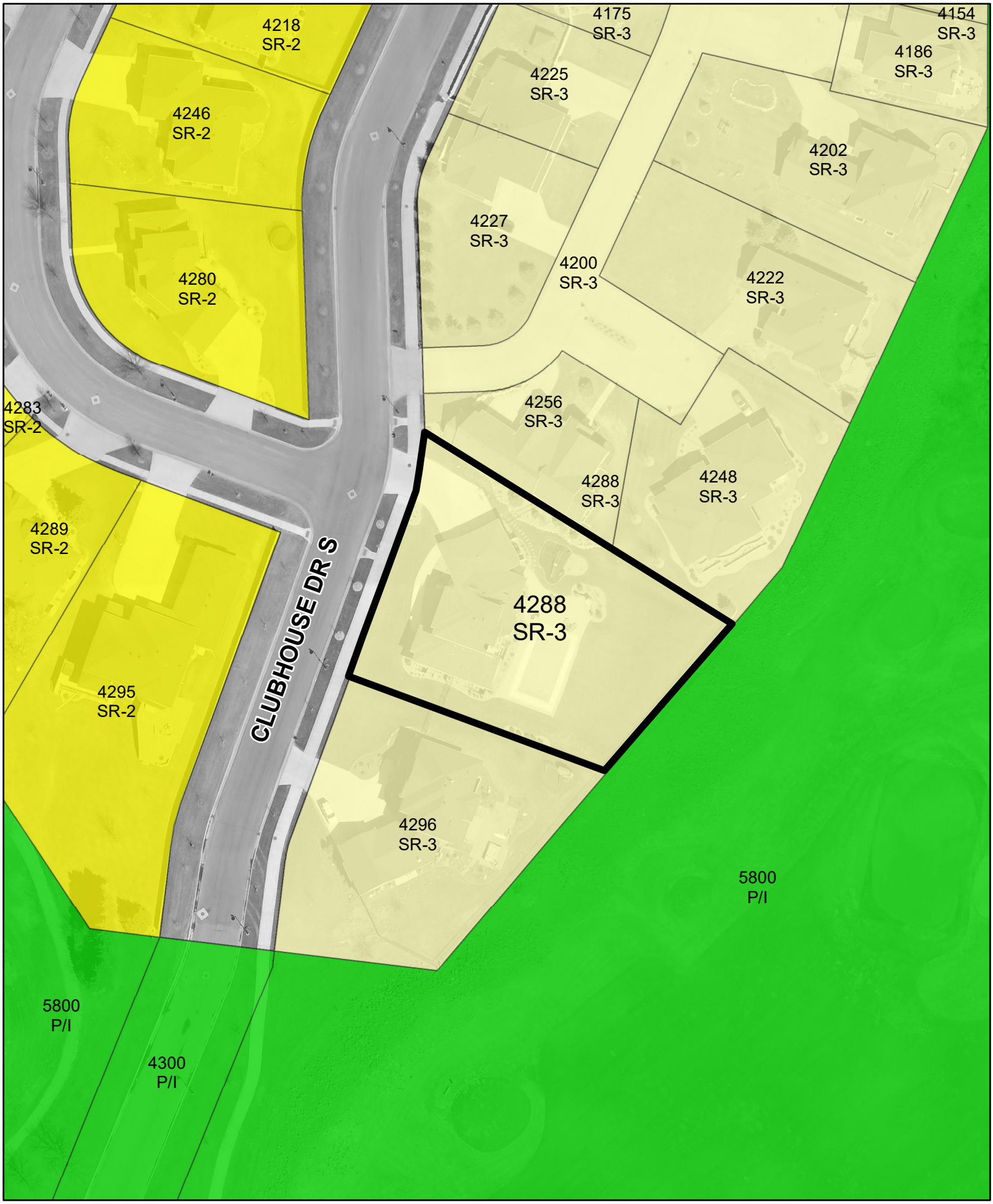
d. The variance desired will not adversely affect the public health, safety or general welfare;

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;

Because a 6.5-foot fence is allowed in the interior side yard, a 1.5-foot variance would be the minimum variance needed for the applicants to construct the 8-foot-tall fence in the interior side yard. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow an 8-foot-tall fence in the SR-3 zoning district on the basis that the review criteria of Section 20-0914.E.1 (c) has not been met."



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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

4288 Clubhouse Drive

0 40 80 Feet

N

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.

4288 Clubhouse Dr S

1:564	6/18/2019 1:51:10 PM

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

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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*): Todd Reil / Tricia Reil Date: 5/6/19

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

Office Use Only

Date Filed: 5-7-19 Planning Contact: Nonrefundable Fee $185.00: Ck. #1475

Todd D Reil
Tricia M. Reil
4288 Clubhouse Drive
Fargo, ND 58104

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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): Todd and Tricia Reil	Name (printed):
Address: 4288 Clubhouse Dr	Address:
Primary Phone: 612-845-4163	Primary Phone:
Alternative Phone: 612-845-4162	Alternative Phone:
Fax:	Fax:
Email: tmiskavige@yahoo.com	Email:

Location of property requesting a variance:

Address: 4288 Clubhouse Dr. Fargo, 58104

Zoning District: Osgood

Legal Description: Lot 1: Block 1: Osgood Villas 3rd, Lots 1, 2 & 4 Block 1 (** 9-8-15 Comb From 01-8401-00010-000, 01-8401-00020-000 & 01-8401-00040-000. PER FGO # 2015-071)

Proposed Variance Information:

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

Accessory Uses; Height of fences (20-0403: B, 6, c(1-b&c))

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 4 feet and 6.5 feet and my project is 8 feet.

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.)

We are planning to install an 8 foot high fence to prevent accidental basketball shots hitting our neighbors house. The location of our hoop is locating behind our neighbors house. Our neighbors house was built almost to the lot line. We plan to install 18 feet of fence 18 inches from the property line. In addition, we plan to leave space for the air conditioner and gas meter.

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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;

Because our neighbor's house was built so close to the lot line, our request for variance is unique to the height of a fence along the side of our house.

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

If the variance is granted, it will positively affect our neighbor's house. Basketball will not accidentally hit the neighbor's house.

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;

Installing a privacy fence will eliminate accidental balls hitting the neighbor's house which cause noise to the occupants inside. The privacy fence will also reduce the noise from a bouncing ball.

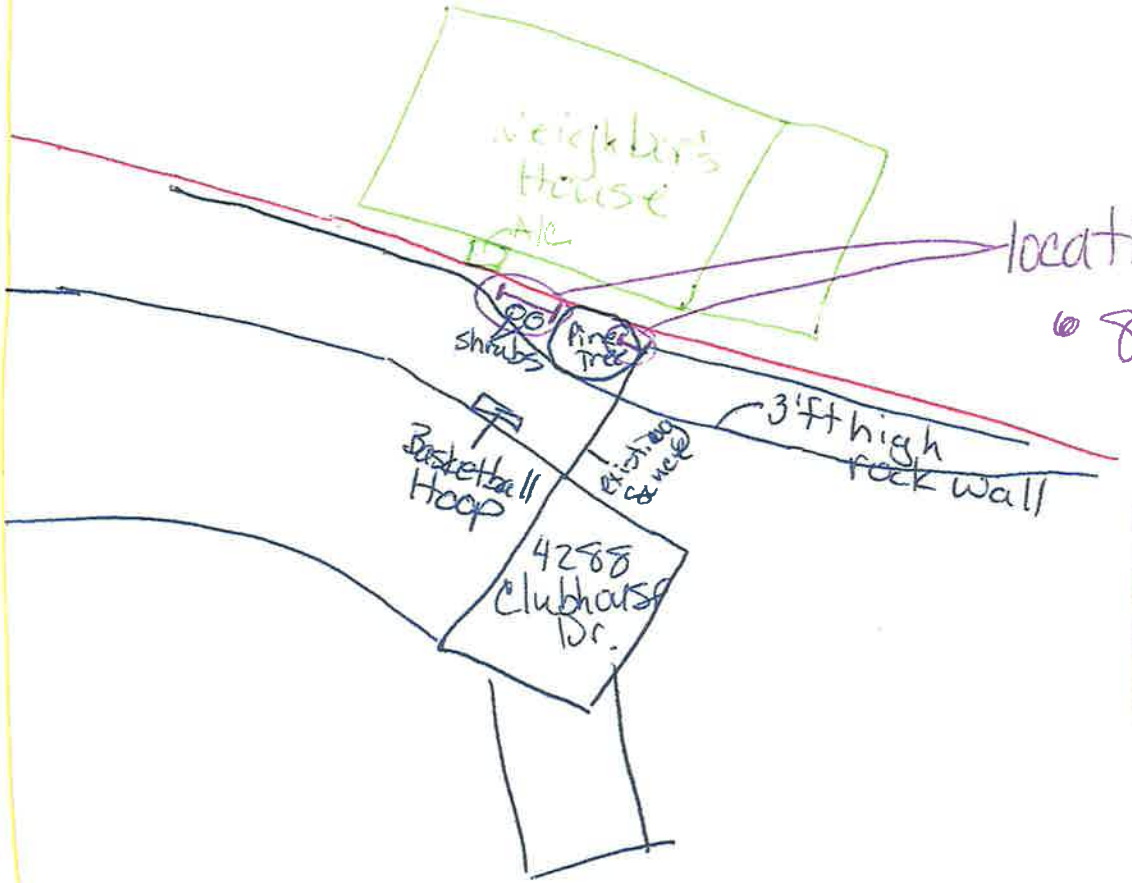
4. The variance desired will not adversely affect the public health, safety, or general welfare; and

There are no public safety, health or general welfare concerns because this will be installed on private property and is for noise reduction and property protection.

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

Installing a privacy fence at 8 feet high will minimally reduce the noise and distruction of property to our neighbor's house.

4288 Clubhouse Dr Variance Application Diagram



location of
- 8 foot high privacy fence
  Total of 18 feet long
  sitting 18" off the property line.
- ~~Galveston~~
  White smooth finish
  by Bufftech

(Like this but white.)

Osgood Villas Homeowners Association

4186 Clubhouse Drive S Fargo, ND 58104

Osgood First Addition Homeowners Association

4265 45th St. S Suite 111-30 Fargo, ND 58104

June 14, 2019

To: City of Fargo Planning Department:

This letter of protest is submitted jointly by the Osgood Villas Homeowners Association and the Osgood First Addition Homeowners Association in regard to the variance request for the construction of an 8' fence requested by the homeowners located at 4288 Clubhouse Drive S, Fargo, ND 58104.

It clearly states in paragraph 16 "Fences" of the Osgood First Addition Declaration of Restrictive Covenants Amendment, filed 07/18/2016, that **"No such fence shall exceed six (6) feet in height nor be constructed of chain link. Fencing on lot lines that are adjacent to the golf course must be of transparent design and shall be constructed as to not block the view corridors to the golf course from adjacent lots."** Please see attached Declaration of Covenants and Reservation of Public Utility Easements.

The current City of Fargo Land Development Code states that the height of fences on the property owners interior side yard is limited to 6.5 feet.

Both Homeowners Associations feel that any dispute between the homeowners involved in this variance request should be able to implement an alternative solution other than the construction of an 8' solid fence that could restrict the surrounding landscape view of affected adjoining property owners of the Osgood Villas Development. For the reasons we've listed how it would violate the restrictive covenants of our neighborhood, we would not approve or support this variance request.

Respectfully Submitted,

Osgood Villas Homeowners Association

By: Bob Moe Date: 6-14-19

Bob Moe – President

Osgood First Addition Homeowners Association

By: Valerie Fiske Date: 6/14/19

Valerie Fiske - President

June 16th, 2019

City of Fargo Planning and Development
225 4th St. North
Fargo, ND 58102

RE: Protest to approval of variance at 4288 Clubhouse Drive S

To Whom It May Concern:

This letter is to serve as our official protest to granting a variance to Section 20-0403 (B) of the Land Development Code for the property at 4288 Clubhouse Dr S, Fargo, ND. The current code specifically sites limiting the placement of fence structures to 6.5 feet when involving a location of the interior side yard. The current request was made in order to allow a fence of 8 feet to be placed.

As it currently stands, placing such a fence would be a variation to the City of Fargo code. Additionally, the property at 4288 Clubhouse Drive S legally is a part of not only Osgood First Home Owners Association but still is also included as being a part of Osgood Villas Association dating back to its initial inception. As the plot lines and official exclusion to the HOA were never amended in regards to this property, its regulations would apply to this property as well. A fence of the proposed height is above the limits set by both association bodies in addition to the City of Fargo specifications.

There are already a number of violations of the current code pertaining to fencing on the property at 4288 Clubhouse Drive S in regards to insufficient distance from the property line within 3 feet of the specified boundary for zoning district of SR as well as insufficient distance of placement of plants and hedges. Granting a variance to a planned structure at this property would only continue to affect issues already present regarding safety and water drainage patterns, respect for property lines of adjacent homes and eventual ramifications for home property values and resale ability.

In view of the above, we respectfully ask the Fargo Board of Adjustment to deny the request for variance to Section 20-0403 (B).

Sincerely,

Samantha Kapphahn and Harry Moe
4256 Clubhouse Drive S
Fargo, ND 58104