



PLANNING AND DEVELOPMENT

200 Third Street North

Fargo, North Dakota 58102

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MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planner *AN*
DATE: June 21, 2016
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, June 28, 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, June 28, 2016 9:00 a.m.
City Commission Room
AGENDA

1. Approve Minutes of May 24, 2016 Meeting
2. Old Business
3. New Business
 - a) Variance Request – 813 Kennedy Court North
Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow construction of a detached garage that would exceed the maximum allowable height for an accessory structure within the SR-3, Single-Dwelling Residential, zoning district.
 - b) Variance Request – 1524 8th Street South
Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow construction of a detached garage that would encroach into the required interior-side setback area within the SR-2, Single-Dwelling Residential, zoning district.
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:

May 24, 2016

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, o, 2016.

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

Item 2: Approval of Minutes: Regular Meeting of October 27, 2015

Member Fischer moved the minutes of the October 27, 2016 Board of Adjustment meeting be approved. Second by Member Love. All Members present voted aye and the motion was declared carried.

Item 3: Old Business

No old business was discussed.

Item 4: New Business

a) Appeal of an Administrative Decision

Appellant claims that staff erred in not allowing firearm sales as a home occupation: DENIED

A Hearing had been set for April 26, 2016; however, the applicant requested the Hearing be continued to this time and date.

Planner Aaron Nelson presented an overview on the background regarding staff's decision to deny the applicant's request. He explained the Relevant Code Provisions supporting staff's decision referring to the section of the Land Development Code included in the packet. Mr. Nelson stated the applicant feels staff erred in their decision and is bringing the appeal before the Board of Adjustment for a ruling.

Further discussion evolved regarding staff's interpretation of the Land Development Code as it relates to the North Dakota Century Code, and federal Law administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

City Attorney Erik Johnson spoke and affirmed his opinion as stated in the attached document included in the packet.

Applicant Andrew Curtis spoke on behalf of his appeal.

Member Love moved to affirm staff's decision to prohibit the processing/sale of firearms as a home occupation. Second by Member Ford-Dunker. Upon call of the roll Members Love, Fischer, Lundberg, Ford-Dunker, and Wendel-Daub voted aye and the motion was declared carried.

Item 5: Other Business

No other business was discussed.

Item 6: Adjournment:

Member Fischer moved to adjourn the meeting at 9:26 a.m. Second by Member Love. All Members present voted aye and the motion was declared carried.

CITY OF FARGO

Board of Adjustment

Variance Staff Report

Item No: 3.a		Date: June 21, 2016
Address: 813 Kennedy Court N		
Legal: Lot 13, Block 2, Montplaisir's Subdivision		
Owner(s)/Applicants: Benjamin D. Brooks		
Reason For Request: To construct a two-story detached garage that would be taller than is permitted.		
Zoning: SR-3, Single Dwelling Residential		
SR-3 Accessory Structure Standards		Current/Proposed Accessory Structure Standards
Rear Setback:	3'	Rear Setback: 3'
Interior Side Setback:	3'	Interior Side Setback: 3'
Accessory Building Height:	15'	Accessory Building Height: 17'

Background:

The applicant, Benjamin D. Brooks, would like to construct a 12' x 16' detached two-story garage that would exceed the maximum allowable building height for accessory structures. The property is located at 813 Kennedy Court North and is within the SR-3, Single-Dwelling Residential, zoning district. Section 20-0403 of the Land Development Code limits accessory structures to a maximum building height of 15 feet within the SR-3 zoning district. The applicant, however, would like to construct the garage to a height of 17 feet. Accordingly, the applicant is requesting a variance in order to allow the proposed garage to exceed the maximum building height by approximately 2 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;

As noted in the submitted application, the applicant is proposing to construct the garage in order to accommodate a specific garage design and to allow the structure to have taller ceilings on both levels. The subject property is 3,652 square feet in area, which is 1,348 square feet less than the minimum required lot size of 5,000 square feet in the SR-3 zoning district. In addition, the minimum lot width in the SR-3 zoning district is 50 feet, whereas the subject property is 44 feet wide. Aside from having a deficient lot size and lot width for the SR-3 zoning district, which is not a result of the owners' intentional actions, no other unique conditions were identified.

It should be noted that the lot size and dimensions are standard for the neighborhood. A majority of the lots in this area are of a 44' x 83' size and are also located within the SR-3 zoning district. In addition, the 15' maximum accessory building height applies to single-dwelling residential zoning districts SR-1 through SR-5. Consequently, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the same zoning district, as the subject property does not differ from properties within the surrounding neighborhood and no unique conditions have been identified. **(Criteria NOT satisfied)**

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

In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date staff has received one written comment on this application from a representative of a neighboring property owner relating to the possibility of additional snow accumulation on the neighboring garage roof due to the height of the applicant's proposed garage. A copy of this letter is attached. Regarding this concern, staff finds that the proposed variance has the potential to result in increased snow accumulation on the adjacent property, due to an increased 'snow fence' effect that a taller building would potentially create compared to a shorter building. **(Criteria NOT satisfied)**

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

According to the applicant, the variance is being requested in order for the applicant to construct a detached garage, which is a typical accessory use permitted with single-family homes. Specifically, the applicant states that the variance is needed in order to allow a two-story garage with adequate ceiling height for storage space.

However, staff finds that the property can be used for an otherwise allowed use without coming into conflict with applicable site development standards. A second story on a garage is not necessary to accommodate storage. Additional storage could be accommodated on the ground floor of a garage or in other accessory structure, while meeting the dimensional standards of the Land Development Code. In addition to the existing house, 418 square feet of supplementary building coverage would be permitted on the subject property. As such, the applicant could build a single-story garage that has double the coverage of the proposed garage, without the need for a variance.

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

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

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


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

As mentioned above, staff suggests that there is no hardship because a garage could be constructed without coming into conflict with applicable site development standards and the requested variance does not appear to arise from conditions that are unique to the subject property not ordinarily found in the same zoning district. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicants to construct the garage addition to the height proposed by the applicant. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow a detached garage to exceed the maximum accessory building height in the SR-3 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a, b, & c) have not been met."



Zoning Districts

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





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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):

Bayan D. Bader

Date: 5/20/16

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

Office Use Only

Date Filed: 5/27/16

Planning Contact: AN

Nonrefundable Fee \$185.00: paid

Ch# 2015

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): Benjamin D. Brooks	Name (printed):
Address: 813 Kennedy Ct. N., Fargo ND 58102	Address:
Primary Phone: 801-885-4073	Primary Phone:
Alternative Phone: 801-885-2742	Alternative Phone:
Fax:	Fax:
Email: ben@brooks.nu	Email:

Location of property requesting a variance:
Address: 813 Kennedy Ct. N., Fargo ND 58102
Zoning District: SR-3 Single Dwelling
Legal Description: Lot 13, Block 2 in the Montplaisir's subdivision, Chapins. Parcel number 01-0440-02980-000 1

Proposed Variance Information:

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

Height

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 15 ft and my project would propose a height of 17 ft.

Please explain your project, describing why you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions. (Attach additional pages, if needed.)

The property owner has applied for a permit to build a 12' by 16' garage on the property at 813 Kennedy Ct. North. The location of the garage is attached in this application. The property owner has successfully petitioned the city to build a two story garage for car protection on the first floor and storage on the second. A pad has been poured and approved by the city in July of 2015.

The city approved a 15' tall structure on the property with two stories. The property owner is requesting a variance to increase the height of the structure to 17' to improve the structural integrity of the garage (the increased height allows for standard construction designs) and to allow the structures to be built to standard heights for ceiling on both levels.

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;

All of the other homes in the neighborhood have garages and/or sheds. This home does not have a garage, and the shed was on the site of the new garage and was torn down. In order to have both car and storage for outdoor equipment due to the small nature of this lot, it is necessary to build storage above the garage.

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

This variance is to build a garage at 17' which is two feet above the building code. All primary residents in the neighborhood are taller than 17'. In addition, three other garages in the neighborhood are taller than 15. Please see attached map.

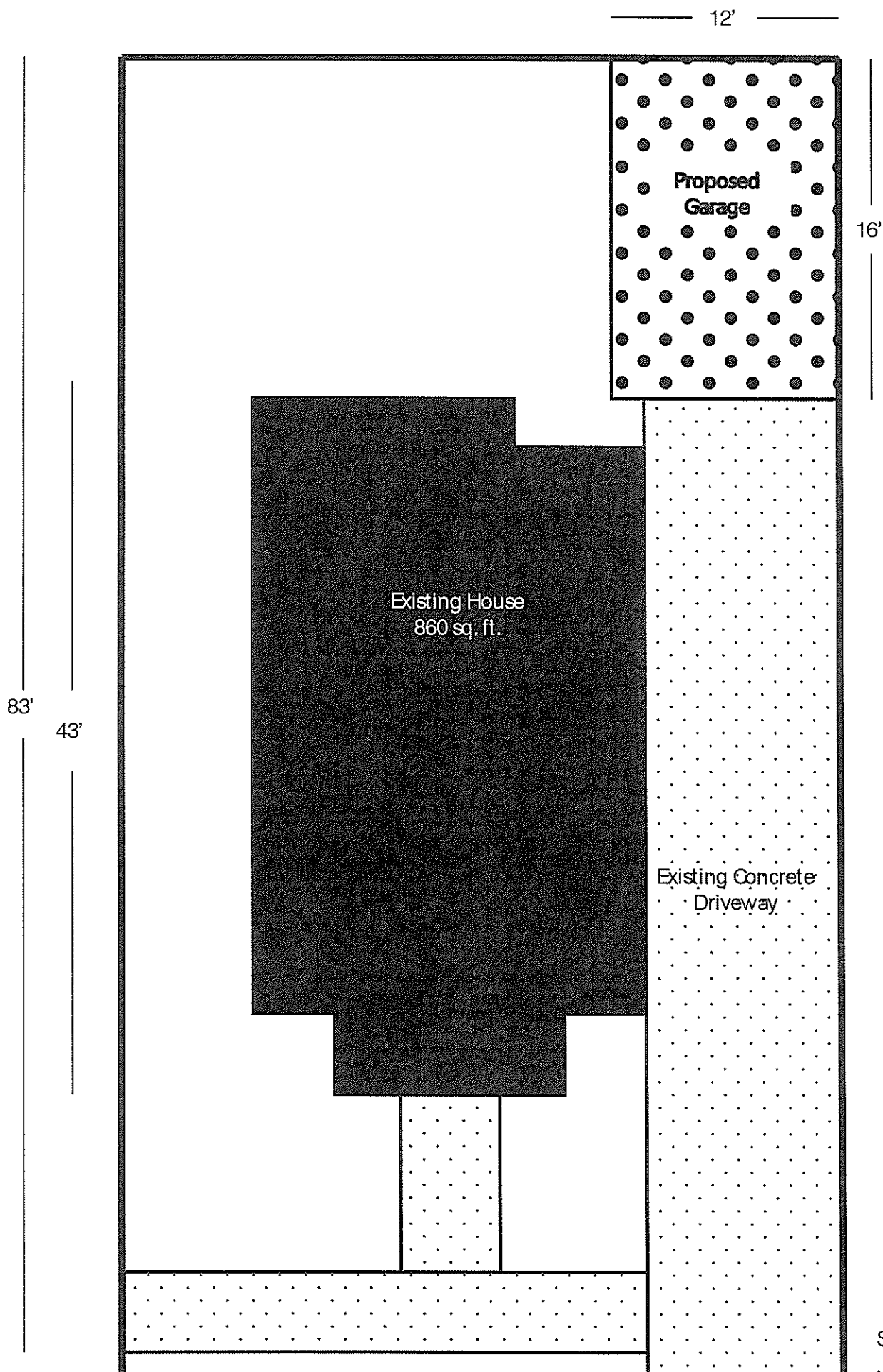
- 3) The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

Two physical hardships will be encountered if the variance is not granted. First, a physical hardship where the property owner would be unable to conduct normal activities due to the short ceilings. In addition, the lot is limited in space and the additional story will provide storage for outdoor equipment (landscape equipment), patio furniture, and pet equipment (kennels). See attached for more detail.

- 4) The variance desired will not adversely affect the public health, safety or general welfare; and The public will not be adversely affected due to the variance. Three other homes in the area currently have garages that are as tall.

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

The additional two feet in height will allow for a standard, more structurally sound garage to be constructed according to the contractor (Thornsteinson Brothers). Also, according to the contractor, two feet is the minimum height that the structure needs to overcome the physical hardships and to provide the necessary structural improvements (condition e).



Notes
Scale 1/8" = 1'
New Concrete Pad 14' x 22' = 308

The property owners will be building a two story garage structure. The first floor will be for a car, and the second story will be for storage. With the current limit of 15' for secondary structure height, the two ceilings will be 7'6" for the first floor and 6' for the second floor. This poses a physical hardship where the property owner would be unnecessarily hard shipped to perform normal activities due to the short ceiling on the second floor and/or hard shipped to park a car in the garage (condition c). In addition, the lot is limited in space and the additional story will provide storage for outdoor equipment (lawn mowers, garden and landscape equipment), patio furniture, and pet equipment (kennels). The site of the garage previously housed a small shed (3' by 4' by 4') that was torn down to build the garage. Storage above the garage without a second story with would be a physical hardship. Also, to store this equipment during the winter would preclude parking a car in the garage during a time that the garage is necessary.

The variance will not harm property owners surrounding the garage as almost all primary residents are taller than 17 feet tall as shown in the below map. The request is for 2 feet additional height which is minimally noticeable. See attached map for information about structures surrounding proposed garage (condition b). This property is unique (condition a) because it is the only home on the block that does not have a garage structure on it presently. More importantly, the additional two feet in height will allow for a standard, more structurally sound garage to be constructed according to the contractor (Thornsteinson Brothers). Also, according to the contractor, two feet is the minimum height that the structure needs to overcome the physical hardships and to provide the necessary structural improvements (condition e). Lastly, this variance requested will not adversely impact the general public in any manner (condition d). Three other garages in the neighborhood are 17' or taller with no negative impact to the general public as shown in the map below. We believe that all five conditions for the variance have been addressed.



Aaron Nelson

From: Rick Engebretson <Rle@rleco.com>
Sent: Tuesday, June 21, 2016 10:02 AM
To: Aaron Nelson
Cc: 'lorisudduth@aol.com'
Subject: RE: Variance application -

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr Nelson

I am writing this response to the variance application for 813 Kennedy Court N. My 90 year old mother, Pauline Engebretson, lives at 809 Kennedy Court and she requested that I respond on her behalf.

I'm not sure that the building department has been out to look at the existing site conditions where this garage is going and how it will affect the current garage located directly east and adjacent to the property line and east wall of the proposed garage structure. The existing garage for 809 Kennedy Court is on the property line or at least within a few inches of the property line. My concerns are that the 17 foot height, which can be taken at the midpoint of the roof line thereby creating a roof peak in excess of 17 feet and depending on roof line slope and direction will induce a snow load which might collapse the 809 Kennedy Court current garage.

Our family has occupied 809 Kennedy Court for approximately 60 plus years, sharing a driveway and adjacency with 813 Kennedy Court. In the earlier years there was a garage similar to the 809 Kennedy Court garage adjacent and identical in design with the 809 Kennedy Court garage. The roof peaks on both roofs ran North-South and drainage was handled by a common gutter system between the two garages discharged to the south unto the driveway. The 813 Kennedy Court garage was not kept up as was the 809 Kennedy Court property and was eventually torn down...approximately 30 years ago. My father resided the 809 Kennedy Court garage, when the 813 Kennedy Court garage was torn down.

I would like to respond to some of the Applicant's Criteria for Approval, which you were so kind to provide.

Criteria #1 – *Outdoor lawn and snow blower equipment would not be something be placed in storage above the ground. In all our previous years the outdoor equipment both lawn mower and snow blower for 809 Kennedy Court was stored within the garage, alongside the vehicle. Believe me the physical size of the lots are so small that outdoor equipment is minimal in quantity and scale to handle the yard and exterior property maintenance.*

Criteria #2 – *The other structures taller than 17' are not directly adjacent to an existing structure lower in height.*

Criteria #3 – *There is no physical hardship for storage of outdoor equipment. Typically patio furniture is stored outside all year round and those not allowed to be stored outdoors are stored in the basement or in the rafters of the garage. The landscape equipment can be stored within the garage (see Criteria #1 answer above). With regards to the pet equipment, the basement storage is the alternative location.*

Criteria #4 – *The 809 Kennedy Court garage will be greatly affected with structural safety caused by snow loading created by the taller structure. We are not against a garage being constructed, however, it should meet the similar size, shape and roof slope as the 809 Kennedy Court garage. We would be willing to work with the builder to create and proportionally pay for a gutter system and flashing to accommodate water drainage.*

Criteria #5 – *The garage at 809 Kennedy Court physically stands for the fallacy of the applicant's criteria for hardship.*

The site plan provided in the application does not correctly reflect the adjacent 809 Kennedy Court garage, which shares the East property line of 813 Kennedy Court. The application also doesn't show whether the ridge line runs North/South or East/West nor does it indicate what slope the garage is. If the ridge line is East/West the peak of the roof will be higher than if the roof peak runs North/South.

We are opposed to granting the variance as submitted, as it will impact the safety of the adjacent property owner with potential of snow loads impacting the roof structure causing a collapse. If the 813 Kennedy Court property owner would like to construct a garage with a similar height and roof slope to 809 Kennedy Court, we would have no objections and would work directly with their builder to accommodate roof drainage.

Respectively Submitted on behalf of Pauline Engebretson, 809 Kennedy Court

Rick Engebretson
701-261-3279

From: Aaron Nelson [mailto:ANelson@cityoffargo.com]
Sent: Monday, June 13, 2016 3:25 PM
To: Rick Engebretson <Rle@rleco.com>
Subject: Variance application -

Rick,

Per our phone conversation, please find the attached copy of the variance application for 813 Kennedy Court N.

Thank you,

Aaron Nelson
Planner
Department of Planning & Development
City of Fargo
200 Third Street North
Fargo, ND 58102

Phone: (701) 241-1475
Email: anelson@cityoffargo.com

CITY OF FARGO

Board of Adjustment

Variance Staff Report

Item No: 3.b	Date: June 21, 2016
Address: 1524 8 th Street South	
Legal: Lot 21, Block 17, Huntington's Addition	
Owner(s)/Applicant: David Gadberry	
Reason For Request: To construct a detached garage within the required setback area.	
Zoning: SR-2, Single Dwelling Residential	

SR-2 Accessory Structure Standards		Current/Proposed Accessory Structure Standards	
Rear Setback:	3'	Rear Setback:	3'
Interior Side Setback:	3'	Interior Side Setback:	1'
Maximum Height:	15'	Height:	15'

Background:

The applicant, David Gadberry, would like to construct a 30' x 26' detached garage within the required interior-side setback area. The property is located at 1524 8th Street South and is within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0403(B)(3) of the LDC allows accessory structures to be constructed as close as 3 feet from interior-side and rear property lines, provided that the accessory structure is located within the rear yard of the property. The applicant, however, would like to construct the proposed accessory garage 1 foot from the interior-side property line, within the rear yard. Accordingly, the applicant is requesting a variance in order to allow the proposed garage to encroach 2 feet into the required interior-side accessory setback area.

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 7,500 square feet in area, which is 500 square feet less than the minimum required lot size of 8,000 square feet in the SR-2 zoning district. In addition, the minimum lot width in the SR-2 zoning district is 60 feet, whereas the subject property is 50 feet wide. Aside from having a deficient lot size and lot width for the SR-2 zoning district, which is not a result of the owner's intentional actions, no other unique conditions were identified.

It should be noted that the lot size and dimensions are standard for the neighborhood. The majority of lots in the area are of a 50' x 150' size and are also within the SR-2 zoning district. In addition, the 3-foot accessory structure setback applies to all single-family zoning districts. Consequently, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the same zoning district, as the subject property does not differ from properties within the surrounding neighborhood and no unique conditions have been identified by the applicant or staff.

(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;

According to the applicant, the variance is being requested in order for the applicant to construct a detached garage, which is a typical accessory use permitted with single-family homes. Specifically, the applicant states that the variance is needed in order to maintain green space on the north side of the garage.

However, staff finds that the property can be used for an otherwise allowed use without coming into conflict with applicable site development standards. A garage could be accommodated on the subject property while meeting the dimensional standards of the Land Development Code. The existing house currently sits approximately 60 feet from the rear property line and the lot width is 50 feet. As a result, there is about 57 linear feet of buildable distance between the back of the house and the required rear setback line and 44 linear feet of buildable distance between interior side setback lines. This equates to an accessory building envelop of approximately 2,508 square feet in the rear yard of the property. Staff finds that there is currently enough buildable area behind the existing house to construct an attached garage without coming into conflict with the applicable site development standards. Furthermore, a property owner's desire to maintain green space does not equate to an unnecessary physical hardship.

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

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

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

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

As mentioned above, staff suggests that there is no hardship because a garage could be constructed without coming into conflict with applicable site development standards and the requested variance does not appear to arise from conditions that are unique to the subject property not ordinarily found in the same zoning district. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the garage in the location proposed by the applicant. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow a building addition to encroach into the required interior-side 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."



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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):

Date:

5/18/16

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

Office Use Only

Date Filed: 5-24-16

Planning Contact:

Nonrefundable Fee \$185.00: Ch. #3955

David W. Goodberry
1524 8th St. S.
Fargo, ND 58103

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>David Gachberry</u>	Name (printed): _____
Address: <u>1524 8th St S Fargo</u>	Address: _____
Primary Phone: <u>701-388-5563</u>	Primary Phone: _____
Alternative Phone: _____	Alternative Phone: _____
Fax: _____	Fax: _____
Email: <u>dgachberry@magnumlog.com</u>	Email: _____

Location of property requesting a variance:
Address: <u>1524 8th St South</u>
Zoning District: _____
Legal Description: _____

Proposed Variance Information:

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

Setback on Southside of Property

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

Standard is 3', requesting 1'

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 plan to build a new garage and request to construct the garage on the same south line as current garage. We believe this variance is justified because the current garage sits on this line and there would be no harm to any adjacent properties. Our goal is to retain as much green space on the north side of the garage versus having wasted space on the south side of the garage.

Criteria for Approval:

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

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

Current Code is 3'. The original garage which we wish to replace sits 1' off the line. Our request is to build a new garage at this 1' line, thus building in the same location as original garage.

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

No, this variance will not affect the rights of any adjacent property owners.

- 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 hardship related to this project is the wasted green space to the south of the garage. By not being able to build on the same line we will have less green space on the north side of the garage, thus less space for family activities.

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

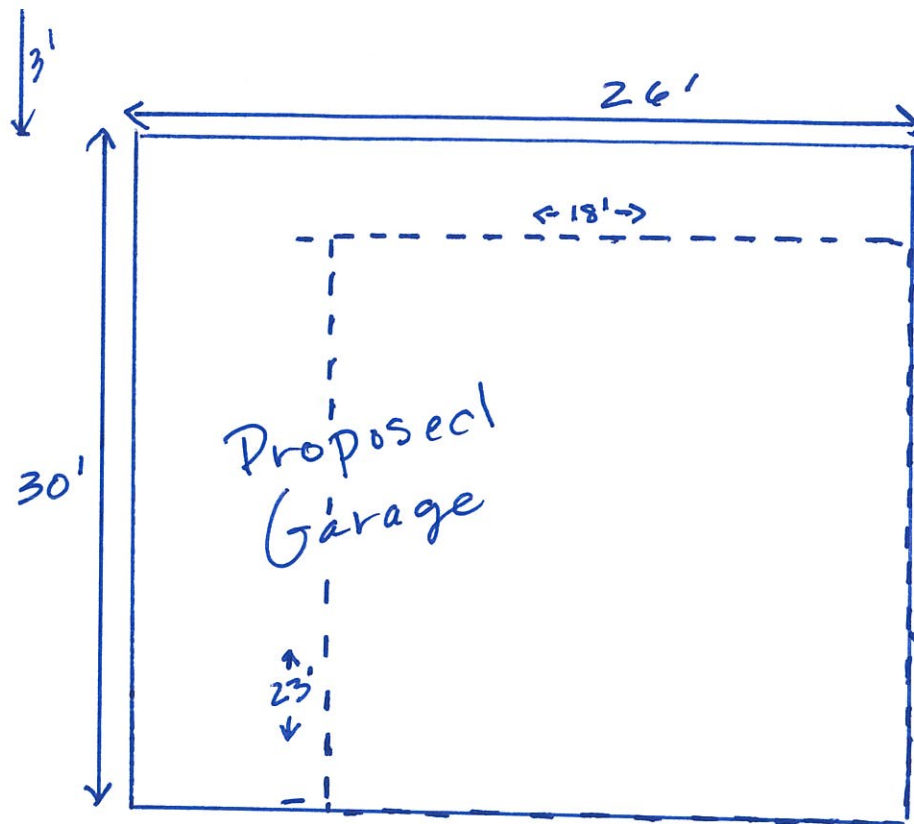
No, this will not affect any of the above.

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

Yes, this variance is very minimal and will allow us to take advantage of more usable space in our yard. We wish to retain as much green space as possible and we believe this variance will allow this to happen.

Thank You.

David Badberry



Lot width
50'

Current Garage = - - - - - 23' x 18'

Proposed Garage = ————— 30' x 26'

