



## PLANNING AND DEVELOPMENT

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### MEMORANDUM

**TO:** Board of Adjustment  
**FROM:** Aaron Nelson, Planner *AN*  
**DATE:** July 19, 2017  
**RE:** Board of Adjustment Meeting

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

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

1. Approve Minutes of June 27, 2017 Meeting
2. New Business
  - a) Variance Request – 3931 & 3949 37th Avenue South  
*Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow for the construction of a building addition to an existing manufacturing facility at a lower elevation than would otherwise be required by the City's Floodproofing Code.*
3. Other Business
  - a) Annual Nomination and Election of Officers
    - Chairperson
    - Vice-Chairperson
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:**

**June 27, 2017**

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 9:00 o'clock a.m., Tuesday, June 27, 2017.

The Members present or absent were as follows:

Present: Matthew Boreen, Russell Ford-Dunker, Michael Love, Mark Lundberg, Mike Mitchell

Absent: Deb Wendel-Daub

Vice Chair Love called the meeting to order.

### **Item 1: Approval of Minutes: Regular Meeting of May 23, 2017**

Member Lundberg moved the minutes of the May 23, 2017 Board of Adjustment meeting be approved. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

### **Item 2: New Business**

#### **a) Variance Request – 285 1st Avenue North: APPROVED**

**Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow a proposed lift station to be constructed to a lower elevation than would otherwise be required by the City's Floodproofing Code.**

Planner Aaron Nelson presented the staff report and an overview of the request. Mr. Nelson reviewed the criteria used during staff's analysis, and stated all approval criteria have been met and staff is recommending approval.

Member Ford-Dunker moved the findings of staff be accepted and the variance to allow a proposed lift station to be constructed to a lower elevation than would otherwise be required by the City's Floodproofing Code be approved, on the basis that the review considerations of Section 21-0603 have been satisfied. Second by Member Lundberg. Upon call of the roll Members Love, Boreen, Lundberg, Ford-Dunker, and Mitchell voted aye. Absent and not voting: Member Wendel-Daub. The motion was declared carried.

#### **b) Variance Request – 200 4th Street South: APPROVED**

**Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow a proposed lift station to be constructed to a lower elevation than would otherwise be required by the City's Floodproofing Code.**

Aaron Nelson presented the staff report and an overview of the request. Mr. Nelson reviewed the criteria used during staff's analysis, and stated all approval criteria have been met and staff is recommending approval.

Member Lundberg moved the findings of staff be accepted and the variance to allow a proposed lift station to be constructed to a lower elevation than would otherwise be required by the City's Floodproofing Code be approved, on the basis that the review considerations of Section 21-0603 have been satisfied, with the condition that all new buildings and equipment be constructed as floodable, or a combination of floodable and elevated, at or above the floodable levels of existing equipment (e.g. generator) or existing lowest opening of buildings on site. Second by Member Mitchell. Upon call of the roll Members Mitchell, Boreen, Lundberg, Ford-Dunker, and Love voted aye. Absent and not voting: Member Wendel-Daub. The motion was declared carried.

**Item 3: Other Business**

Mr. Nelson noted the election of officers for the Board of Adjustment would be held at the July 25, 2017 meeting.

**Item 4: Adjournment**

Member Ford-Dunker moved to adjourn the meeting at 9:15 a.m. Second by Member Lundberg. All Members present voted aye and the motion was declared carried.

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

<b>Item No:</b> 2.a		<b>Date:</b> July 19, 2017
<b>Address:</b> 3931 & 3949 37th Avenue South		
<b>Legal Description:</b> Lot 1 and part of Lot 2, Block 1, Collins Third Addition		
<b>Owner(s)/Applicants:</b> Solid Comfort/Nick Dietrich		
<b>Reason For Request:</b> To construct a building addition to an existing manufacturing facility at a lower elevation than would otherwise be required by the City’s Floodproofing Code.		
<b>Zoning District:</b> LI: Limited Industrial		
<b>Status:</b> Board of Adjustment Public Hearing: July 25, 2017		
Floodproofing Code Standards		Proposed Structure
<b>Elevations:</b>		<b>Elevations:</b>
<b>Lowest opening:</b>	41-foot WSEIA plus 1.2’ or FEMA BFE plus 2.0’	<b>Lowest opening:</b> 41-foot WSEIA minus 1.3’ (0.4’ below BFE)
<b>Fill around building:</b>	41-foot WSEIA plus 0.7’ or FEMA BFE plus 1.5’	<b>Fill around building:</b> 41-foot WSEIA minus 1.6’ (0.7’ below BFE)
<b>Fill 15’ from building:</b>	At or above FEMA BFE	<b>Fill 15’ from building:</b> 0.7’ below BFE

### Application Background:

The applicant has proposed to construct a building addition to an existing manufacturing facility that would have a lower opening and a lower earth fill elevation around the structure than would otherwise be required by the City's Floodproofing Code. The property and proposed building location is within the 41-foot water surface elevation inundation area (WSEIA) and is also within the FEMA-designated Special Flood Hazard Area (100-year floodplain). At this location, the base floodplain elevation (BFE) is about 905.7 feet and the 41-foot WSEIA is at an elevation of 906.6 feet. For construction within the FEMA Special Flood Hazard Area or WSEIA at this location, the Floodproofing Code requires the following:

1. The lowest opening in a building is required to be at or above an elevation that is 1.2 feet above the 41-foot WSEIA elevation. (906.6-foot WSEIA elevation plus 1.2 feet = 907.8')
2. The fill around the building is required to be at or above an elevation that is 0.7 feet above the 41-foot WSEIA elevation. (906.6-foot WSEIA elevation plus 0.7 feet = 907.3')
3. The fill within 15 feet of the building must be at or above the FEMA BFE (905.7')

The lowest opening of the proposed structure would be at an elevation of 905.3 feet, which is 2.5 feet lower than what is required for the lowest opening elevation. In addition, the fill around the building would be at an elevation of 905.0 feet, which is 2.3 feet lower than required. The fill within 15 feet of the structure would also be at an elevation of 905.0 feet, which is 0.7 feet lower than required. Accordingly, the applicant is requesting a variance in order to construct the proposed building addition with the lowest opening and fill around the building at a lower elevation than is required by the Floodproofing Code.

According to the applicant, the proposed building addition would not be possible without the variance because the construction of the building in accordance with the Floodproofing Code would necessitate an elevated structure that would require ramps inside and would result in unequal grades between the proposed addition, the existing parking lot area, and the existing truck docks. The applicant stated that the required ramps would result in a reduction of warehouse space and affect production operations. In addition, that the unequal grade between the proposed addition and the existing parking lot and dock would eliminate the possibility for ingress or egress of trucks and forklifts on the south and west sides of the addition and create vehicular circulation issues.



**Codes Background:**

Although this staff report references a new building addition, the Building Official would note that if the value of the new addition were to exceed 50% of the value of the existing buildings, then the existing buildings would also be required to be brought into conformance with the floodproofing code. If it were to be found that the existing buildings did not have to come into conformance with current floodproofing requirements, then the Building Official would allow the floor elevation transition to be located within the new addition, as long as it was completely floodable.

The rationale behind the development of the City's 41-foot WSEIA is in anticipation for future increases to the FEMA Special Flood Hazard Area (1% annual chance/100-year flood plain). While mapping flood elevations as part of the FM Diversion Feasibility Study, it was found by the Army Corps of Engineers that the hydrology used by FEMA to establish the Special Flood Hazard Area was obsolete. It was based on a study that did not include in the period of record for the Red River events after 1979. It is the practice of FEMA to review communities every 5 years to determine if a new map is warranted. Based on information contained in the FM Diversion Feasibility Study of Fargo which accounts for recent flood events, including the flood of record in 2009, the information on updated hydrology and hydraulics is readily available and FEMA will have cause to remap Fargo. When this update occurs, it is anticipated FEMA will raise the elevation of the Special Flood Hazard Area, resulting in additional areas of the City being located within this flood plain and subject to additional flood insurance requirements or increases. As such, the purpose of the 41-foot WSEIA is to prevent non-floodproof construction within areas that will potentially be located within Special Flood Hazard Area in the future. It should also be noted that the state rules require elevation on fill to the BFE +1 foot. In an attempt to keep new construction compliant with this state requirement into the future, we are requiring the additional 1.2 feet.

Another caveat of floodproofing and protection has to do with localized flooding versus flooding from the Red River. Many areas of the City are at risk of flooding due to the stormwater infrastructure not being able to handle significant rainfall events. In this aspect the City's floodproofing requirements and policies are intended for emergency protection from both the Red River and from overland flooding or stormsewer overflows.

**Criteria for Approval:**

The Floodproofing Code was enacted by reference within Article 21-06 (Flood Plain Management) of the Fargo Municipal Code. Appeals from Article 21-06 are heard and decided upon by the Board of Adjustment as outlined within Section 21-0603 of the Municipal Code.

§21-0603.G.5 of the Municipal Code states that, *In determining appeals or requests for variances, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:*

- a. The danger that materials may be swept onto other lands to the injury of others;*
- b. The danger to life and property due to flooding or erosion damage;*
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;*
- d. The importance of the services provided by the proposed facility to the community;*
- e. The necessity to the facility of a waterfront location, where applicable;*
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;*
- g. The compatibility of the proposed use with the existing and anticipated development;*

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program or that area;*
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;*
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,*
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.*

§21-0603.H.1 of the Municipal Code includes additional considerations for variances:

- 1. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items (a-k) in subsection (G)(5) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increases.*
- 2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or any state or local inventory or register of historic places without regard to the procedures set forth in the remainder of this section.*
- 3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.*
- 4. Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
- 5. Variances shall be issued only upon:*
  - a. A showing of good and sufficient cause;*
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and*
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*
- 6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.*

#### **Staff Analysis:**

**a. The danger that materials may be swept onto other lands to the injury of others;**

This situation could happen as it has happened in very extreme situations, but is not anticipated.

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

This is hard to determine. In a flood situation, there will be danger to life and property. Most of the surrounding buildings are constructed at a higher elevation than the existing building and with a variance, the new addition will also be lower.

**c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;**

This is hard to determine. In a flood situation, there will be danger to life and property. Most of the surrounding buildings are constructed at a higher elevation than the existing building and with variance, the new addition will also be lower than the FEMA BFE.

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

The facility is a large manufacturing facility that is important to the business community. In a flood situation, it would not be important to the critical stability of the city infrastructure.

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

Not applicable. The proposed improvement is not in the MDZS or the LDZS river setback zones.

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

The proposed use would be allowed by-right within GI (General Industrial) and LI (Limited Industrial) zoning districts. There are vacant properties outside of the 41-foot WSEIA and 100-year floodplain within industrial zoning districts. There is also a small undeveloped portion of the subject property that is not within these flood areas. It should be noted, however, that the proposed variance is for an addition to an existing facility that is located within the 41-foot WSEIA and 100-year floodplain. Therefore, the use of an alternative location would likely require the relocation of the existing facility.

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

Use is compatible with existing facility.

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

No inconsistencies have been identified in relation to the comprehensive plan. Floodplain management is related to the City's floodproofing policies as part of the 41' WSEIA elevation requirements.

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

Access may be questionable as servicing roadways may become inundated during storm sewer overflows or heavy rainfall events. The applicant will need to understand this potential risk as staff has no data to suggest that the requested variance would result in an increased or decreased safety of access.

**j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,**

Staff has no data to confirm the effects of flooding as a result of overland flooding or storm sewer overflows.

**k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.**

If a variance is granted, there would be added costs for providing government services during and after a flood that affects this property.

Since this is a variance request to Article 21-06 (Flood Plain Management) related to floodproof construction, the Zoning Administrator defers to the Building Official/Flood Plain Administrator as well as the City Engineer for current and future floodplain management. This application was reviewed by the City's Planning and Development, Engineering, and Building Inspections Departments ("staff"), whose comments are included in this report.

Staff finds that the proposed variance is somewhat unique in that in addition to violating the City-imposed elevation standards of the 41-foot WSEIA, the proposed variance would also violate elevation standards

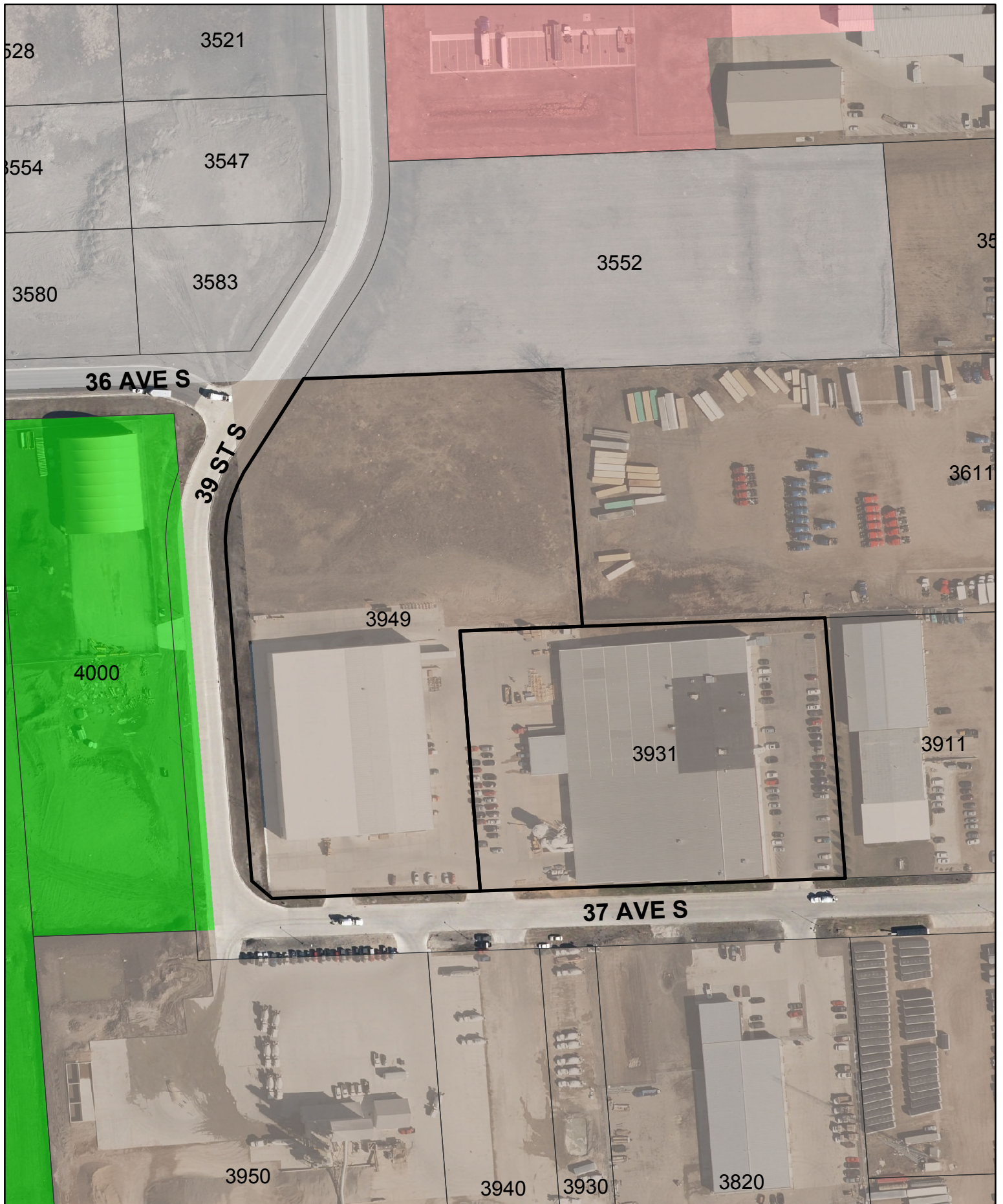
established by the federal government, specifically the Special Flood Hazard Area (100-year floodplain) established by FEMA. The City of Fargo has worked with FEMA to secure an exemption to federal standards in order to allow the construction of basements when properly floodproofed. While the option for variance exists to provide relief from floodproofing requirements in situations resulting in hardship, the City has been warned by FEMA that abuse of the variance provision could result in a loss of the current city-wide basement exemption that FEMA has granted the City of Fargo.

Ultimately, staff does not support this request for variance. While the applicant has presented rational for wanting the variance, staff is not convinced that a variance is warranted and is not convinced that denial of the variance would result in an undue hardship. It has not been demonstrated that the proposed variance is compatible with the floodplain management program. In addition, Section 21-0603.H.1.5.b requires an exceptional hardship to exist in order for a variance to be granted. Staff suggests that the variance is being requested as a matter of convenience, and that there is no hardship since the proposed facility can be constructed to meet the required floodproofing standards.

Staff further recommends that any grant of a variance should be conditioned upon the applicant agreeing to a waiver of liability against the City. Engineering staff would work with the City Attorney's Office to draft an acknowledgment form that would outline the owner's decision to not follow the City's floodproof construction requirements. The purpose of this document would be to provide additional protection to the City from unforeseen issues that may arise as a result of the variance.

**Staff Recommendation:** "To accept the findings of staff and deny the requested variance on the basis that the review considerations of Section 21-0603 have not been satisfied."

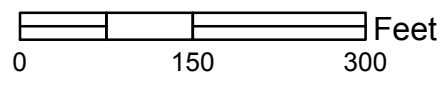




Legend

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

### 3931 & 3949 37th Avenue South











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.

# FEMA SFHA (100-Year Floodplain)

1:2,257

7/19/2017 8:07:55 AM

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

City of Fargo, ND







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

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

## 41-Foot WSEIA

1:2,257

7/19/2017 8:05:13 AM

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): \_\_\_\_\_

Date: 7-13-17

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

#### Office Use Only

Date Filed: \_\_\_\_\_

Planning Contact: \_\_\_\_\_

Nonrefundable Fee \$185.00: \_\_\_\_\_

Solid Comfort

3931 37<sup>th</sup> Avenue S.

Fargo, ND 58104

(701)282-4900

[rlaliberte@SolidComfort.com](mailto:rlaliberte@SolidComfort.com)

[jlarkin@SolidComfort.com](mailto:jlarkin@SolidComfort.com)

#### Proposed Variance Information

- Solid Comfort is seeking a variance to the required top of floor elevation for a building expansion to existing facilities
- The standard elevation required by the City of Fargo would be 907.8. Solid Comfort would like to match its existing facilities with an elevation of 905.3.

The purpose of this project is to expand the existing warehouse and dock space at the Solid Comfort facility. This expansion would connect the existing buildings under one large roof. There are three main functions of Solid Comfort's operation within its warehouse space:

- Raw material unloading, loading, storage, & circulation within the operation
- Fabrication of finished goods
- Finished goods circulation, warehousing, loading, & shipping

If the expansion were built to 907.8, these functions would be negatively affected in a physical way. Three drawings are provided for reference – existing conditions, proposed expansion @ 907.8, and proposed expansion @ 905.3.

#### Criteria for Approval

- Solid Comfort was started at this location in 1981. The facility was built to local standards and the expansions to follow were built in the same manner. Our operation was originally acceptable by all local standards and not until recent changes in required building elevations would an expansion built to match our existing facilities have been unacceptable. It bears mentioning, a large percentage of the buildings in this neighborhood are older facilities that were built prior to the new building elevation requirements. We would not be creating an altogether new condition by building to 905.3 in this neighborhood.
- Solid Comfort's operation and situation is unique to the area. We're not aware of any adjacent properties that would experience the same physical hardships to their operations if they were to expand their facilities in accordance with current building elevation requirements. Solid Comfort is primed for this expansion. The physical hardships we'd experience if required to build to 907.8 are unique to our operation in the immediate area.
- The raw material goods used by Solid Comfort are moisture sensitive. The proposed expansion would allow us to perform all of the required raw material functions within the building, there for protecting the material from outdoor elements. If built to 907.8, flatbed trucks and/or forklifts would not be able to enter/exit the south or west sides of the expansion because the

levels of the existing lots are built to match the existing buildings. The existing truck docks coupled with parking infrastructure are not conducive to grade-level overhead doors on the south or west side of the expansion building. This creates a traffic flow problem both within the warehouse and the lot. Further investigation shows that aside from this, ramps will need to be placed inside the existing facilities to provide forklift access into the expansion facility. The ramps will need to be large enough for the safe transport of large material units by forklift. With a slope of not more than 1:12 making up 2.5' vertically the required ramps will take up an unacceptable amount of usable space within each of the existing buildings. Altering this space will adversely affect not only the use of warehouse space in the existing west building, but also the automated production operations in the east building.

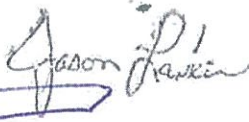

- It is our understanding that the local elevation requirement of 907.8 for this area is based off of recent flood requirements created after any other building additions to Solid Comfort's current facilities. A water event that would create flooding of this specific facility were they to be granted this variance, would be a rare and very unique situation. That being said, flooding in this neighborhood would be overland in nature. It is our position that overland flooding is gradual and generally an event that people are able to foresee and prepare for. An event that people have time to react to in an organized fashion should prevent harm to public health, safety, and general welfare. Measures can be taken for protection and safety.
- In this situation, there are really only two choices. Either the facility is expanded in the desired fashion, providing the operational advantages Solid Comfort needs to justify the investment or the local requirements are enforced, creating operational challenges that are going to force Solid Comfort to take a hard look at its operation and the feasibility of investing in an expansion of this scope in this location.

We appreciate the consideration of all reviewing parties. We are excited about the future of Solid Comfort and the ability to provide additional jobs and economic stability within the Fargo community.

Respectfully-

Jason Larkin - CEO

Rick Laliberte - CFO

  
  
6 26-17

**Variance Representation by:**

Nick Dietrich

Dietrich Construction, LLC

4151 38 St. SW, Suite C

Fargo, ND 58104

O - (701)235-1853

F - (701)235-3788

[ndietrich@dietrichfargo.com](mailto:ndietrich@dietrichfargo.com)

Josh Magelky

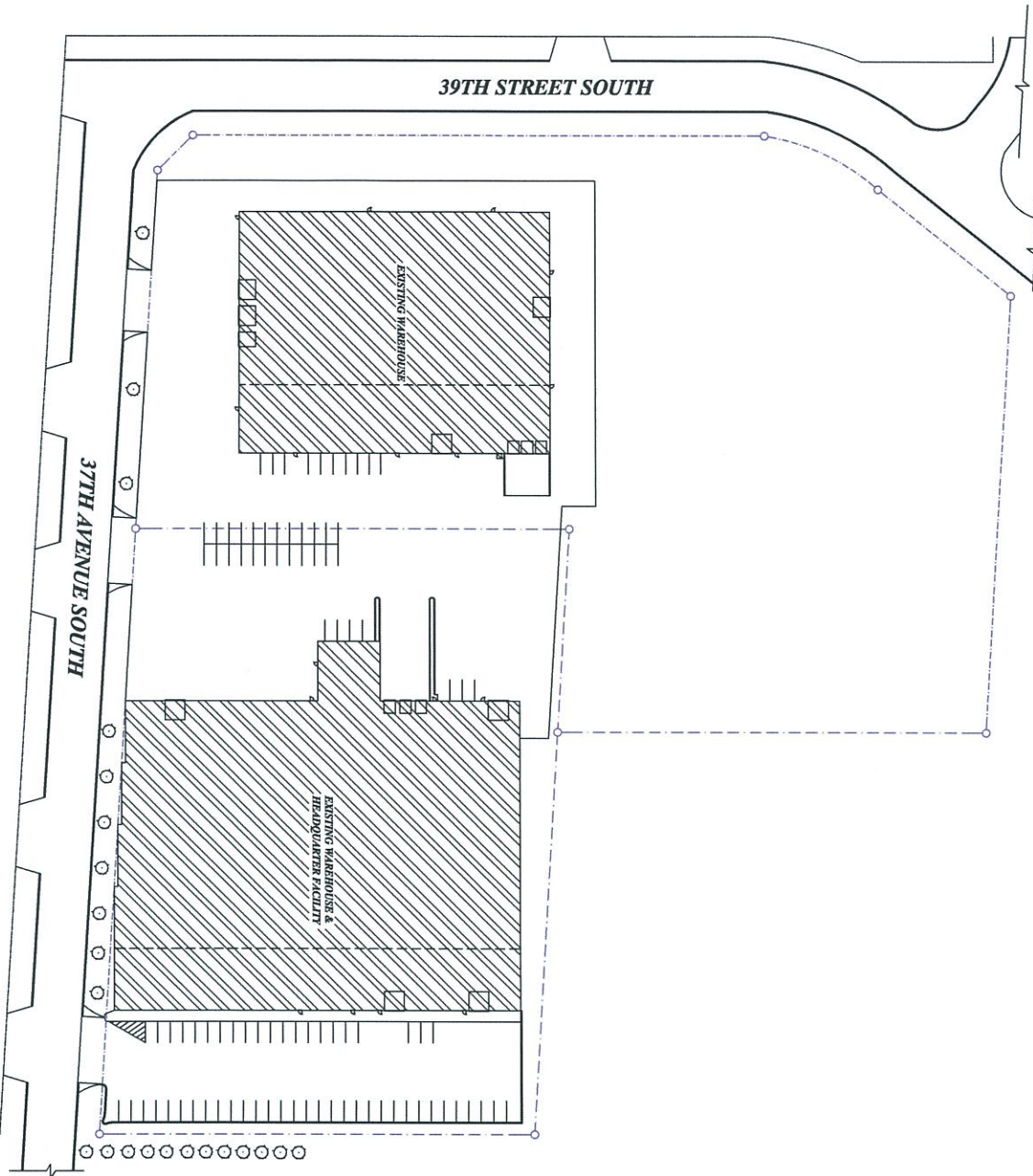
MBN Engineering, INC.

503 7<sup>th</sup> St. N, Suite 200

Fargo, ND 58102

O - (701)478-6336

[josh.magelky@mbnengr.com](mailto:josh.magelky@mbnengr.com)



P

# **SOLID COMFORT - WAREHOUSE EXPANSION** 3931 37TH AVE. SOUTH - FARGO, ND 58104

## **ATTENTION**

ANY USE, REPRODUCTION, COPYING, MODIFICATION OR DERIVATIVE WORK OF THE PLAN(S) FURNISHED BY DIETRICH CONSTRUCTION IS A VIOLATION OF THE UNITED STATES FEDERAL COPYRIGHT ACT.

## **DISCLAIMER OF WARRANTIES**

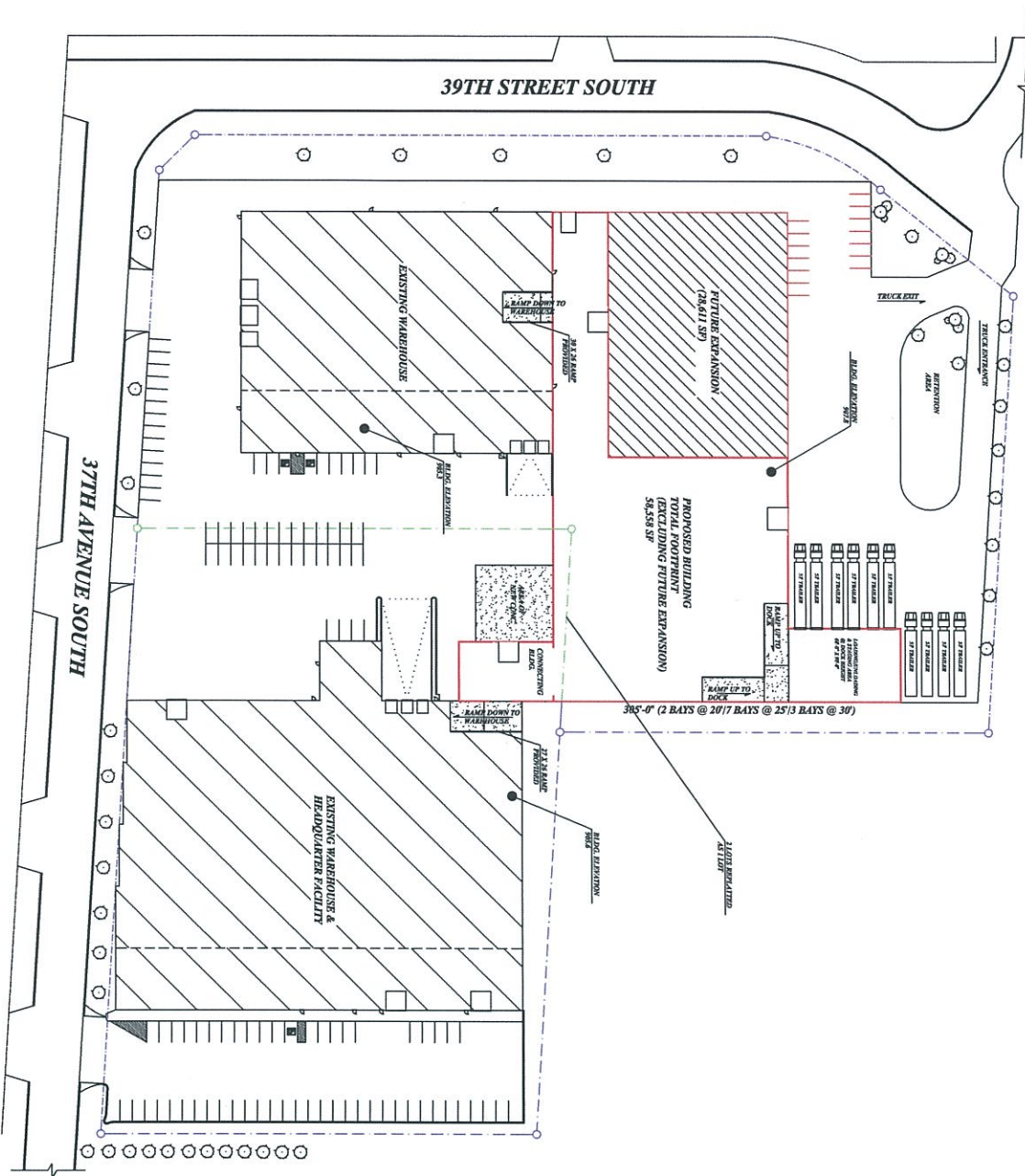
Plans furnished by DIETRICH CONSTRUCTION, were prepared by draftsmen who are not qualified as professional engineers or architects. DIETRICH CONSTRUCTION, expressly disclaims any liability for errors on these plans. Use of such plans are at the risk and use furnished WITHOUT ANY WARRANTY. Responsibility for the design of correct structural material, spans, load coverage and construction methods are the responsibility of the builder, owner or user of these plans.

**DIETRICH CONSTRUCTION**  
4151 38TH ST SW STE B 701-335-1833 PH  
FARGO, ND 701-335-3788 FAX

ACCEPT THIS PLAN AS DRAWN  
NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

PROJECT:	REVISIONS:
FILE: 0000	0000
DRAWN BY: 0000	0000
BY: 0000	0000
SCALE: 0000	0000
NCD: 0000	0000
START DATE: 0000	0000
THD: 0000	0000
PROD. TIME: 0000	0000
SQ. FT.: 0000	0000





PROPOSED SITE PLAN



P

# SOLID COMFORT - WAREHOUSE EXPANSION

3931 37TH AVE. SOUTH - FARGO, ND 58104

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4151 38TH ST SW STE B 701-235-1853 PH  
FARGO, ND 701-235-3788 FAX

I ACCEPT THIS PLAN AS DRAWN  
NAME: DATE:

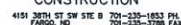
PROJECT:	0000	REVISIONS:	0000
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DESIGNED BY:	BHT	SCALE:	0000
SKETCHMAN:	NCD	START DATE:	0000
THD	0000	END DATE:	0000
SS	0000		0000



3931 37TH AVE. SOUTH - FARGO, ND 58104

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PROJECT:	0000	REVISION:	0000
FILE:	0000		0000
DRAWN BY:	BYT		0000
SURVEYMAN:	NCD		0000
START DATE:	TBD		0000
PROJ. TIME:	0000		0000
SQ. FT.	0000		0000

Solid Comfort

3931 37<sup>th</sup> Avenue S.

Fargo, ND 58104

(701)282-4900

[rlaliberte@SolidComfort.com](mailto:rlaliberte@SolidComfort.com)

[ilarkin@SolidComfort.com](mailto:ilarkin@SolidComfort.com)

### Consideration for Fargo Municipal Code – Section 21-0603

#### **21-0603 sub-section G (a-k)**

- The expansion of Solid Comfort's facility will allow us the ability to store all of our loose materials indoors. This ability removes the condition for materials to be swept off of our property.
- Much of this property is already at the proposed elevation, so the majority of the conditions presently exist. In relation to the expansion facility, the gradual rise and fall of any potential flooding in this area would not be aggressive in nature meaning there should be no real life safety danger. Any possible flood damages to the property would be cosmetic in nature and although Solid Comfort may potentially have a mess to clean up, the damages would not be structurally catastrophic. It is our position that flood waters would not be rapidly flowing there for there would not be a high level of erosion related damage with the understanding that most of this property is either buildings or concrete and there are no severe grade changes where slowly moving water could undermine or wash away sediment destructively.
- Solid Comfort understands the possible, albeit extremely unlikely, vulnerability of their existing facilities to potential flooding. We've always been willing and able to take responsibility for these facilities and there for we're also willing to take the same responsibilities with the new expansion facility.
- Solid Comfort has been a growing, successful business at this location since 1981. We're currently in an aggressive growth mode and in need of this expansion. Solid Comfort is prepared to invest somewhere in the neighborhood of \$10 million in improvements to our facility to handle the necessary growth to our operation. Along with the tax earnings for the City of Fargo comes the addition of 50-75 jobs upon completion of the expansion. Solid Comfort is going to expand operations. We're experiencing a very real possibility of expanding from a \$30 million company currently to a \$45 or \$60 million company within the next ten years. Our dilemma is do we expand where we're at, or do we move to a different location outside of Fargo. Moving to other LI areas in West Fargo or south of the FM area entirely have been on the table.

- This is not a waterfront location
- There is no other location or land elevation available on this property for the proposed expansion. We mentioned in an earlier response that Solid Comfort has considered other locations. This operation works much more efficiently on one location. If another location is selected, the entire operation would most likely relocate.
- The existing facilities and the fact that Solid Comfort has been operating in this location since 1981 creates a situation where the proposed expansion to our facilities at an elevation of 905.3 would aesthetically/operationally make more sense to the property. The exterior pavement areas will be able to connect and transition properly from existing elevations allowing for simple maintenance and storm water management. There are no neighboring properties that would experience a negative outcome to the desired floor elevation of this expansion. Completion of the proposed expansion at the 905.3 elevation will create a finished product that not only operates as it should, but looks as though it was done that way from the beginning. Not only is this outcome operationally advantageous for Solid Comfort, but it's our estimation that the future valuation of the property as a whole will be better because of it.
- It is our understanding that as you raise an area of property above flood stage, that water volume will be unavoidably passed onto neighboring property. If the flood management program for this area is designed for all vacant land and there for the future improvements on those lands to be raised above flood stage, it would seem to us that these acres built as proposed would alleviate pressure to surrounding properties.
- Solid Comfort is a business, not a place of residence. In the case that a flood was to occur in this area, operations would be shut down until flood waters were to recede so any danger to actual life safety of potential occupants would be virtually non-existent. That being said, the existing facilities are currently at the desired elevation of 905.3, meaning the condition would not necessarily change for emergency vehicles. In the case of a potential fire, their vehicles would be able to navigate this area and the building will be equipped with a more than adequate fire sprinkler system.
- In 1997 and again in 2009 the City of Fargo experienced some of the worst flooding in its history. Solid Comfort was warned, flood waters would be at our doorstep. In 2009 we diked our property in anticipation of these waters at our own expense. Thankfully the flood never reached our location. Since then Drain 27 has been protected to a higher level and the City of Fargo has worked hard improving its infrastructure which makes even an imposing flood like those we experienced in 1997 and again in 2009 less likely than ever to reach this location. Upon completion of the Fargo Diversion project, flooding of this area will be virtually impossible by today's standards. In the case that a flood were to take place of a proportion that it actually reached Solid Comfort; it's height would be manageable, the water would rise and fall gradually without velocity, our experience tells us that the duration may be a week or so depending on the given situation, the rate of rise would be predictable/actionable, the sediment transfer in this area would be minimal in nature do to slow moving to stagnant flood waters, and wave



action would be minimized due to surrounding neighborhood infrastructure not allowing winds to build damaging waves.

- We do not see where this expansion would create any additional cost to governmental bodies if a flood were to occur. Public utilities and the elevations of those utilities are currently existing and already established in this neighborhood. Negative effects of a flood to public utilities in this neighborhood would not be caused by the expansion of this facility.

We are providing these statements in addition to our variance application to support our position and provide consideration of Fargo's Municipal Code.

Respectfully-

Jason Larkin - CEO

Rick Laliberte - CFO



**Variance Representation by:**

Nick Dietrich

Dietrich Construction, LLC

4151 38 St. SW, Suite C

Fargo, ND 58104

O – (701)235-1853

F – (701)235-3788

[ndietrich@dietrichfargo.com](mailto:ndietrich@dietrichfargo.com)

Josh Magelky

MBN Engineering, INC

503 7<sup>th</sup> St. N, Suite 200

Fargo, ND 58102

O- (701)478-6336

[josh.magelky@mbnengr.com](mailto:josh.magelky@mbnengr.com)

Return to Search (index.asp) | Display Print Version (index.asp?dispaddr=01-0484-00015-000&amp;seg=1&amp;print=1)

Today's date is: 6/23/2017

## Assessment Information

Updated: 6/23/2017 12:00:49 AM

[HELP \(help.html#parcelinfo\)](#)

<b>PARCEL NUMBER</b>	01-0484-00015-000		
<b>SEGMENT NUMBER</b>	1		
<b>ADDRESS</b>	3931 37 AVE S		
<b>OWNERSHIP INFORMATION</b>	LARKIN PROPERTIES LLP		
<b>SCHOOL DISTRICT</b>	1 - Fargo		
<b>2017 Appraised Value (Current Certified)</b>			
Full Appraised Value	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
Net Taxable Appraised Value	\$857,000	\$3,122,700	\$3,979,700
Assessment (Local, State, Exempt)	\$857,000	\$3,122,700	\$3,979,700
	Local		
<b>2018 Proposed Appraised Value (subject to change)</b>			
Full Appraised Value	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
Net Taxable Appraised Value	\$857,000	\$3,122,700	\$3,979,700
Assessment (Local, State, Exempt)	\$857,000	\$3,122,700	\$3,979,700
	Local		
<b>BUILDING INFORMATION</b>			
Year Built	1979		
Story Height (Res. Only)	N/A		
Main Floor Sq. Ft. (Res. Only)	N/A		
Total Building Sq. Ft.	82394 Sq. Ft.		
Number of Apartment Units	N/A		
<b>LAND USE</b>	Commercial		
<b>PROPERTY TYPE</b>			
<b>LOT SIZE</b>			
Front Width	490		
Back Width	490		
Depth Side 1	350		
Depth Side 2	350		
Square Footage	171343		
<b>TAXES PAYABLE (2018)</b>	Cass County Property Taxes ( <a href="https://www.casscountynynd.gov/county/depts/treasurer/proptax/app/Default.aspx#Property=01-0484-00015-000">https://www.casscountynynd.gov/county/depts/treasurer/proptax/app/Default.aspx#Property=01-0484-00015-000</a> ) (This link will direct you to the Cass County web site where you will be able view your property tax information).		
<b>LEGAL DESCRIPTION</b>	Click here to view legal description information		

See also -- Fargo GIS Map (<http://gis.cityoffargo.com/Link/jsfe/public.aspx?PIN=01-0484-00015-000>) for interactive mapping and parcel information (link will open in a separate window).

### Special Assessment Information

Updated: 6/23/2017 12:03:08 AM

(Special assessment information pertains to the entire parcel, not individual segments)

[HELP \(help.html#specials\)](#)

(http://www.fargond.gov)

Project Category (click for details)	Current Installment	Balance Remaining (principal only)	Work Complete (pending approval)	Work in Progress (estimate only)
<b>STREETS</b>				
570000	\$336.09	\$4,028.88		
508900	\$1,071.52	\$8,289.09		
<b>UTILITIES</b>				
491300	\$666.42	\$5,770.87		
508800	\$1,437.34	\$11,012.81		
454500	\$100.95	\$436.77		
527700	\$335.85	\$2,598.11		
<b>MAINTENANCE</b>				
509300	\$243.04	\$1,743.90		
<b>Totals</b>	<b>\$4,191.21</b>	<b>\$33,880.43</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Payment Status</b> (https://www.casscountynd.gov/county/depts/treasurer/proptax/app/Default.aspx?ezPropertyId=01048400015000#Property=01-0484-00015-000)				

Principal and Interest Breakdown			
Year	Total Payment	Principal Amount	Interest Amount
2016	\$4,195.91	\$1,938.31	\$2,257.60
2015	\$4,200.60	\$1,826.57	\$2,374.03
2014	\$20,272.56	\$16,815.81	\$3,456.75

NOTE: For additional special assessment information, please fill out this form  
 (http://lf.cityoffargo.com/Forms/SpecialAssessmentRequest).

Return to Search (index.asp)

Property Value, Ownership, or Legal Description Information Feedback: assessor@fargond.gov (mailto:assessor@fargond.gov)

Special Assessments Feedback: specials@fargond.gov (mailto:specials@fargond.gov)

#### 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.

#### Fargo City Hall

200 3rd Street  
 North  
 Fargo, ND  
 58102

#### Mayor's Office

701.241.1310  
 (tel: +7012411310)

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Today's date is: 6/23/2017

## Assessment Information

Updated: 6/23/2017 12:00:49 AM

[HELP \(help.html#parcelinfo\)](#)

<b>PARCEL NUMBER</b>	01-0484-00105-000		
<b>SEGMENT NUMBER</b>	1		
<b>ADDRESS</b>	3949 37 AVE S		
<b>OWNERSHIP INFORMATION</b>	LARKIN PROPERTIES LLP		
<b>SCHOOL DISTRICT</b>	1 - Fargo		
<b>2017 Appraised Value (Current Certified)</b>			
Full Appraised Value	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Net Taxable Appraised Value	\$1,160,000	\$727,800	\$1,887,800
Assessment (Local, State, Exempt)	\$1,160,000	\$727,800	\$1,887,800
	Local		
<b>2018 Proposed Appraised Value (subject to change)</b>			
Full Appraised Value	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Net Taxable Appraised Value	\$1,160,000	\$727,800	\$1,887,800
Assessment (Local, State, Exempt)	\$1,160,000	\$727,800	\$1,887,800
	Local		
<b>BUILDING INFORMATION</b>			
Year Built	1999		
Story Height (Res. Only)	N/A		
Main Floor Sq. Ft. (Res. Only)	N/A		
Total Building Sq. Ft.	25000 Sq. Ft.		
Number of Apartment Units	N/A		
<b>LAND USE</b>	Commercial		
<b>PROPERTY TYPE</b>			
<b>LOT SIZE</b>			
Front Width	280		
Back Width	445		
Depth Side 1	695.45		
Depth Side 2	708.42		
Square Footage	257857.47		
<b>TAXES PAYABLE (2018)</b>	Cass County Property Taxes ( <a href="https://www.casscountynd.gov/county/depts/treasurer/proptax/app/Default.aspx#Property=01-0484-00105-000">https://www.casscountynd.gov/county/depts/treasurer/proptax/app/Default.aspx#Property=01-0484-00105-000</a> ) (This link will direct you to the Cass County web site where you will be able view your property tax information).		
<b>LEGAL DESCRIPTION</b>	Click here to view legal description information		

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### Special Assessment Information

Updated: 6/23/2017 12:03:08 AM

(Special assessment information pertains to the entire parcel, not individual segments)

[HELP \(help.html#specials\)](#)

(http://www.fargond.gov)

Project Category (click for details)	Current Installment	Balance Remaining (principal only)	Work Complete (pending approval)	Work in Progress (estimate only)
<b>STREETS</b>				
570000	\$491.54	\$5,892.30		
508900	\$1,477.31	\$11,428.15		
<b>UTILITIES</b>				
BN-14-4	\$22,750.82	\$349,739.62		
454500	\$33.67	\$145.65		
527700	\$491.20	\$3,799.81		
491300	\$963.99	\$8,347.62		
508800	\$4,204.27	\$32,212.88		
<b>MAINTENANCE</b>				
509300	\$355.45	\$2,550.49		
<b>Totals</b>	<b>\$30,768.25</b>	<b>\$414,116.52</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Payment Status</b> <a href="https://www.casscountynd.gov/county/depts/treasurer/proptax/app/Default.aspx?ezPropertyId=01048400105000#Property=01-0484-00105-000">https://www.casscountynd.gov/county/depts/treasurer/proptax/app/Default.aspx?ezPropertyId=01048400105000#Property=01-0484-00105-000</a>				

## Principal and Interest Breakdown

Year	Total Payment	Principal Amount	Interest Amount
2016	\$31,762.69	\$11,893.73	\$19,868.96
2015	\$8,020.53	\$3,463.97	\$4,556.56
2014	\$10,991.04	\$6,045.49	\$4,945.55

NOTE: For additional special assessment information, please fill out this form  
(<http://lf.cityoffargo.com/Forms/SpecialAssessmentRequest>).

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Special Assessments Feedback: [specials@fargond.gov](mailto:specials@fargond.gov) (<mailto:specials@fargond.gov>)

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**Fargo City Hall**

200 3rd Street  
North  
Fargo, ND  
58102

**Mayor's Office**

701.241.1310  
(tel: +7012411310)

## Nick Dietrich

---

**From:** Josh Magelky <Josh.Magelky@mbnengr.com>  
**Sent:** Monday, June 26, 2017 3:36 PM  
**To:** Nick Dietrich  
**Subject:** RE: Solid Comfort

- a. The danger that materials may be swept onto other lands to the injury of others; **There should be no materials swept onto other lands due to the fact that everything will be stored inside the building.**
- b. The danger to life and property due to flooding or erosion damage; **There shouldn't be any danger to life and property due to flooding due to the fact that the project is in the middle of town. The only danger would be due to overland flooding, however the south side of Fargo is protected by a levy system. The adjacent properties are built to similar elevations approximately 2 feet lower than the required elevation set by the City of Fargo.**
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners; **See answer for (b.)**
- d. The importance of the services provided by the proposed facility to the community; **?**
- e. The necessity to the facility of a waterfront location, where applicable; **N/a**
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage; **No other locations on site are available, the two current buildings are at elevations 905.20 and 905.30. The building project is an infill project and is requested that we maintain the same elevation to maintain flow between the buildings on site.**
- g. The compatibility of the proposed use with the existing and anticipated development; **See answer for (f.)**
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area; **The area is nearly filled in with development. The city streets and utilities are set below the BFE for the area. This is due to the fact that the BFE has been raised since the area was initially developed. However, the area is protect with levy systems from all directions due to the fact it is in the middle of town.**
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles; **There shouldn't be any concern, see answer for (h.)**
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and, **N/a**
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges. **N/a., also see answers for (b.) and (h.)**

As for paragraph no. 3, we would request the that lowest elevation as well as the grading around the building (15') not meet FEMA requirements. Instead, we would ask that City to consider our request to match the existing elevation of the two buildings. Flood proofing of foundations would still be done and the Owner would be required to maintain flood insurance for the building.

Let me know if you need anything else.

Joshua M. Magelky, PE  
Civil Engineer

MBN Engineering  
503 7<sup>th</sup> Street N, Suite 200  
Fargo, ND 58102



P: 701.478.6336  
C: 701.371.4874  
F: 701.478.6340  
[josh.magelky@mbnengr.com](mailto:josh.magelky@mbnengr.com)

---

**From:** Nick Dietrich [<mailto:ndietrich@dietrichfargo.com>]  
**Sent:** Friday, June 23, 2017 8:53 AM  
**To:** Josh Magelky  
**Subject:** FW: Solid Comfort

From Aaron below:

In paragraph 3, can you shed some light on what he's looking for when he talks about lowest openings, 15', etc.

Nick

---

**From:** Aaron Nelson [<mailto:ANelson@FargoND.gov>]  
**Sent:** Friday, June 23, 2017 8:32 AM  
**To:** Nick Dietrich  
**Cc:** Bruce Taralson; Jody Bertrand; Barrett Voigt  
**Subject:** RE: Solid Comfort

Nick,

For the most part, floodproofing variance applications are reviewed by the Engineering and Inspections departments, as they are the departments that administer the floodproofing code and storm water/flood protection requirements. The Planning Department's role is to facilitate the application and Board of Adjustment process.

As such, the pre-application meeting will be attended by staff from the Planning, Engineering, and Inspections departments, not just me. If we were to meet outside of City Hall, we would need to coordinate that among the staff attending from these departments. In the past, Jody Bertrand from Engineering and Bruce Taralson from Inspections have been the points of contact for those two departments for floodproofing variances. 1:00pm on Monday does not work for me. If you have some additional times that would work, we can try to coordinate something.

Regarding your application, I've skimmed through it and it appears to be incomplete. Your application must provide responses to the review criteria of Section 21-0603 of the Fargo Municipal Code (in lieu of the five criteria listed on page 3 of the application), as I referenced in my email to you on April 3. Your application must also be more specific regarding the standards for which you are requesting variance. There are multiple flood elevation requirements for new construction, such as for the buildings lowest opening, fill around the building, and grading within 15 feet of the building. Your application is also missing property owner information, address, zoning district, legal description, and property owner signature.

Thank you,

Aaron Nelson | Planner  
City of Fargo | Department of Planning & Development  
200 Third Street North | Fargo, ND 58102  
Phone: (701) 241-1475 | Email: [anelson@FargoND.gov](mailto:anelson@FargoND.gov)

**From:** Nick Dietrich [<mailto:ndietrich@dietrichfargo.com>]  
**Sent:** Friday, June 23, 2017 7:07 AM  
**To:** Aaron Nelson <[ANelson@FargoND.gov](mailto:ANelson@FargoND.gov)>  
**Subject:** Solid Comfort

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

Good morning Aaron-

Our customer would prefer a pre-application meeting on Monday @ 1:00.

Jason Larkin (CEO @ Solid Comfort) is disabled to the extent that he is restricted to a large motorized wheelchair. He is very involved in the company and would like to attend the pre-application meeting. Rick Laliberte (CFO) would also attend the meeting.

They would greatly appreciate it if the meeting could be held at their main office – much easier for Jason. As I understand it, they would like to take a few minutes to show you their operation and give you a better understanding of what this means to them.

I've attached the application for review.  
Please let me know your availability.

Regards-

Nick Dietrich, Const. Manager  
Dietrich Const. LLC.  
Office (701)235-1853  
Fax (701)235-3788  
Cell (701)866-9289

**BOARD OF ADJUSTMENT  
BY-LAWS  
CITY OF FARGO  
(ADOPTED AUGUST 27, 2013)**

The Board of Adjustment for the City of Fargo, North Dakota, hereinafter referred to as the "Board," does hereby adopt these by-laws that shall govern its internal operations.

**I. MEMBERSHIP**

The Board shall be composed of those individuals who have been duly appointed thereto by the Board of City Commissioners.

The Board shall consist of five (5) members and one (1) alternate to be appointed for three (3) year terms by the Mayor and subject to confirmation by the City Commission.

Vacancies shall be filled in the same manner as other appointments to the Board.

**II. OFFICERS**

The Chairperson shall generally preside and conduct all Board meetings, with the advice and consent of other members, may appoint committees from Board members to perform specific duties.

The Vice Chairperson - In the event of the absence, disability, resignation or conflict of interest of the Chairperson, the Vice-Chairperson shall exercise all the powers and duties of said Chairperson, performing this function, the Vice Chairperson shall automatically become Board Chairperson and the position of Vice Chairperson shall be deemed vacant and the Board may elect from its own members a successor Vice Chairperson to fill this vacancy at its next meeting.

**III. MEETINGS**

Quorum - A quorum shall consist of four (4) members.

Annual Meeting - At the regular annual meeting on the fourth Tuesday of July of each year, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year.

Meetings - The Board shall meet on the fourth Tuesday of each month at 9:00 o'clock a.m. If the regular meeting date falls on a holiday when the City governing offices are generally closed, the meeting will be held on the regular meeting day and time of the succeeding week.

Continued Meetings - The City will send out re-notification to all interested parties when a variance request has been tabled by the Board.

Meeting Location - All regular meetings of the Board shall be held in the City Commission Room unless otherwise published or distributed in the public notice for the public hearing.

Order of Business - The items of business to be considered at any meeting shall be specified on the notice of such meetings, which shall be the meeting agenda and which shall be transmitted to each member not later than five days immediately preceding the meeting date. Items of business at any meeting will be considered by the Board in the order in which they appear on the meeting agenda and, except in the cases of emergency or mistake, no items shall be added thereto after said written agenda is transmitted to Board members.

Records - The Board shall keep a record of its resolutions, transactions, findings, and determinations; and, such record shall be a public record.

#### **IV. VOTING**

All Board members, including the Chairperson and Vice-Chairperson, shall be entitled to one equal vote at any meeting. There shall be no voting by proxy. Dissenting votes or abstentions on any matter presented to the Board shall be clearly expressed orally or in writing when voting is in process. All administrative matters, other than appeals presented for Board consideration, shall be decided by the majority vote of those present at the meeting. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the building official or to decide in favor of the applicant any matter upon which it has jurisdiction.

#### **V. COMPENSATION**

All members of the Board shall serve without compensation. When duly authorized by the Board, members thereof may attend planning conferences or meetings of planning institutions or hearings upon legislation, and the Board may pay the reasonable traveling expenses incidental to such attendance pursuant to a resolution spread upon its minutes.

#### **VI. PURPOSE**

The purpose of this Board is to provide for deviations from the literal provisions of the Zoning codes in specific instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances to those particular parcels only when it is demonstrated that such actions will be in keeping with the spirit and intent of this code.

#### **VII. OTHER PROCEDURES**

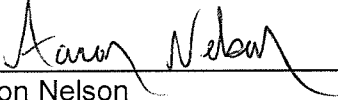
All operating procedures not specifically provided for herein shall generally be governed by "Robert's Rules of Order" which is hereby incorporated for purposes of reference. In the event any provision of "Robert's Rules of Order" are inconsistent herewith, these By-Laws shall govern.

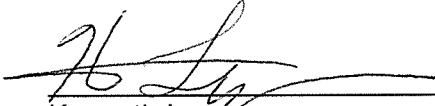
## VIII. CONTROL OF LAW

The By-Laws of the Board generally shall be governed by the applicable ordinances of the City of Fargo, laws of the State of North Dakota, and laws of the United States of America and any provisions herein inconsistent or in conflict with such laws or ordinances shall be deemed void.

## IX. AMENDMENT AND REPEAL

Except when in conflict with state statutes, these By-Laws may be amended or repealed from time to time by the affirmative vote of a majority of the appointed Board members at a meeting. Said By-Laws may be made inoperative regarding any particular subject matter by the affirmative vote of a majority of Board members.

  
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Aaron Nelson  
Secretary, Board of Adjustment

  
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Kenneth Lepper  
Chairperson, Board of Adjustment