



## PLANNING AND DEVELOPMENT

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### MEMORANDUM

TO: Board of Adjustment  
FROM: Aaron Nelson, Planner *AN*  
DATE: July 19, 2016  
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, July 26, 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](mailto:planning@cityoffargo.com). Thank you.

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**BOARD OF ADJUSTMENT**  
**Tuesday, July 26, 2016 9:00 a.m.**  
**City Commission Room**  
**AGENDA**

1. Approve Minutes of June 28, 2016 Meeting
2. Approve Minutes of June 30, 2016 Meeting
3. New Business
  - a) Variance Request – 3068 Thunder Road South  
*Request for a variance of Section 20-0502 of the LDC. The requested variance is to allow construction of a building that would encroach into the required interior-side setback area within the LI, Limited Industrial, zoning district.*
4. Other Business
  - a) Annual Nomination and Election of Officers
    - Chairperson
    - Vice-Chairperson
5. 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.cityoffargo.com/streaming](http://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:**

**June 28, 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, June 28, 2016.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Russell Ford-Dunker, Michael Love

Absent: Dominic Fischer, Mark Lundberg, Mike Mitchell

Chair Wendel-Daub called the meeting to order.

### **Item 1: Approval of Minutes: Regular Meeting of May 24, 2016**

Member Love noted a correction to the minutes was submitted to the Board prior to today's meeting. Member Love moved the minutes of the May 24, 2016 Board of Adjustment meeting be approved as amended. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

### **Item 2: Old Business**

No old business was discussed.

### **Item 3: New Business**

**a) Variance Request – 813 Kennedy Court North: Request for a variance of Section 20-0403 of the Land Development Code. 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: NO ACTION TAKEN**

**b) Variance Request – 1524 8th Street South: Request for a variance of Section 20-0403 of the Land Development Code. 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: NO ACTION TAKEN**

Chair Wendel-Daub stated the meeting will be continued to Thursday, June 30, 2016 as there is no quorum present to take action on the new business items being presented at this meeting.

### **Item 4: Other Business**

No other business was discussed.

### **Item 5: Adjournment**

The time at adjournment was 9:35 a.m.

## **BOARD OF ADJUSTMENT MINUTES**

**Adjourned Regular Meeting:**

**Thursday:**

**June 30, 2016**

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was scheduled to be held in the City Commission Room at City Hall at 9:00 o'clock a.m., Tuesday, June 28, 2016; however, no quorum was present to take action on new business items; therefore, the Meeting was continued to Thursday, June 30, 2016 at 9:30 a.m.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Russell Ford-Dunker, Michael Love, Mark Lundberg, Mike Mitchell

Absent: Dominic Fischer

Chair Wendel-Daub called the meeting to order stating this meeting is a continuation of the Board's regular meeting held on Tuesday, June 28, 2016.

**Item 1: Approval of Minutes: Regular Meeting of May 24, 2016**

Chair Wendel-Daub stated the minutes from the May 24, 2016 meeting were approved at the June 28, 2016 meeting.

**Item 2: Old Business**

No old business was discussed.

**Item 3: New Business:**

**a) Variance Request – 813 Kennedy Court North: Request for a variance of Section 20-0403 of the Land Development Code. 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: WITHDRAWN**

This was the date and time set for a Hearing on an application requesting a variance for property located at 813 Kennedy Court North; however, the applicant has withdrawn the request.

**b) Variance Request – 1524 8th Street South: Request for a variance of Section 20-0403 of the Land Development Code. 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: DENIED FOR LACK OF A SUPERMAJORITY**

Planner Aaron Nelson presented the staff report and reviewed the criteria used during staff's analysis of the request. Mr. Nelson stated staff is recommending denial as review criteria a and c have not been met.

Applicant David Gadberry spoke on behalf of his application.

Member Love moved the findings of staff be accepted and the variance to allow a building to encroach into the required interior-side setback in the SR-2, Single-Dwelling zoning district be denied, on the basis that the review criteria of Section 20-0914.E.1 (a and c) have not been met. Second by Member Mitchell. Upon call of the roll Members Love, Ford-Dunker, and Wendel-Daub voted aye. Members Lundberg and Mitchell voted nay. Absent and not voting: Member Fischer. The motion was declared failed and the variance was declared denied for lack of a supermajority.

**Item 5: Other Business**

No other business was discussed.

**Item 6: Adjournment:**

Member Love moved to adjourn the meeting at 9:17 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> 3.a	<b>Date:</b> July 19, 2016
<b>Address:</b> 3068 Thunder Road South	
<b>Legal Description:</b> Part of Lot 3, Block 1, Adams 5th Addition	
<b>Owner(s)/Applicant:</b> Choice Investments, LLC (Dave Jones)	
<b>Reason For Request:</b> To construct a building within the required interior-side setback area.	
<b>Zoning:</b> LI, Limited Industrial	
<b>Status:</b> Board of Adjustment Public Hearing: July 26, 2016	

LI Dimensional Standards	Proposed Structure
<b>Setbacks:</b>	<b>Setbacks:</b>
<b>Front (north):</b> 20'	<b>Front (north):</b> > 20'
<b>Interior Side (west):</b> 10'	<b>Interior Side (west):</b> 3'
<b>Interior Side (east):</b> 10'	<b>Interior Side (east):</b> > 50'
<b>Rear (south):</b> 20'	<b>Rear (south):</b> > 20'

#### Background:

The applicant, Dave Jones, would like to construct a 40' x 25' two-story building within the required interior-side setback area. The property is located at 3068 Thunder Road South and is within the LI, Limited Industrial, zoning district. Section 20-0502 of the LDC allows structures to be constructed as close as 10 feet from interior-side property lines. The applicant, however, would like to construct the proposed building 3 feet from the interior-side property line. Accordingly, the applicant is requesting a variance in order to allow the proposed structure to encroach 7 feet into the required interior-side 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;**

As noted in the submitted application, the applicant feels that the need for this variance arises from the current layout of the site in relation to the applicant's desire to construct a new building. However, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the LI zoning district. Having office, shop, parking, and storage yards is not unique to the subject property. In addition, the applicant has presented no evidence to suggest that the current layout of the property is not a result of the owner's intentional action.

Staff suggests that the need for the variance arises from the applicant's desire to increase the number of buildings on the lot, which is not a condition that is unique to the subject property. **(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 other than one inquiry as to the nature of the request. **(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 an additional building on the property. Specifically, the applicant indicates that the variance is needed in order to maintain spacing and access between the proposed building and the existing building.

Staff suggests that the proposed building can be constructed on the subject property in a manner consistent with the current requirements of the LDC. Although alternative locations may not be the most ideal or convenient for the applicant, there is adequate space to construct an additional building within the required setbacks. What's more, even without an additional building, the subject property can be (and currently is) used for an allowed use without coming into conflict with applicable site development standards. Therefore, staff finds that the strict application of the applicable standards will not constitute an unnecessary physical hardship. **(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 the proposed building could be constructed without coming into conflict with applicable site development standards and the requested variance does not 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 building 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 LI zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met."

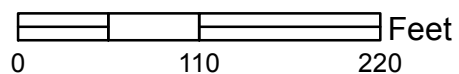




**Zoning Districts**

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

**3068 Thunder Road South**







PLANNING AND DEVELOPMENT  
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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: 6-22-16

**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: \_\_\_\_\_



## 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:	
Name (printed):	DAVE JONES
Address:	4602 WOODHAVEN DR. S
Primary Phone:	701-371-6606 cell
Alternative Phone:	701-478-9141 office
Fax:	701-355-8422
Email:	djones@DLJonesConstruction.com

Representation Information: (if applicable)	
Name (printed):	
Address:	
Primary Phone:	
Alternative Phone:	
Fax:	
Email:	

Location of property requesting a variance:	
Address:	3068 THUNDER S.
Zoning District:	
Legal Description:	BLOCK 1 LOT 3A

### Proposed Variance Information:

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

SET BACK western Interior Side

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 10', OUR Project WOULD REQUIRE 3'

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 WAY OUR BUILDING<sup>SITE</sup> IS LAYED OUT IT ALLOWS US  
NO ROOM FOR EXPANSION.

\* PLEASE SEE ATTACHED DRAWINGS

### 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;

CORRECT. OUR CURRENT OFFICE IS SITUATED AT THE VERY NE CORNER WITH A PARKING LOT AND YARD ACCESS TO THE WEST. THE SHOP IS DIRECTLY BEHIND THE OFFICE SO EXPANSION THOSE DIRECTIONS ARE NOT POSSIBLE.

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

CORRECT. THERE IS A FENCE CURRENTLY ON THE PROPERTY LINE THEREFOR WOULD NOT AFFECT MY NEIGHBOYS WHAT SO EVER.

- 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;

CORRECT. THE NEW BUILDING CANNOT MOVE ANY CLOSER TO THE EXISTING ONE DUE TO THE ACCESSIBILITY TO OUR SHOP & YARD

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

CORRECT.

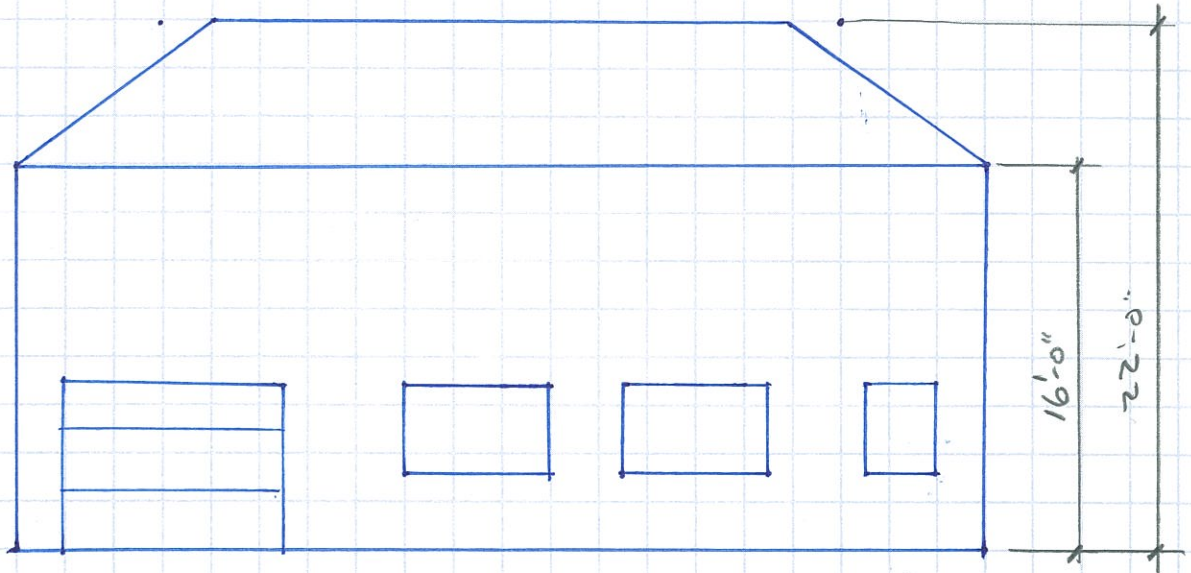
- 5) The variance is the minimum variance that will overcome the hardship.

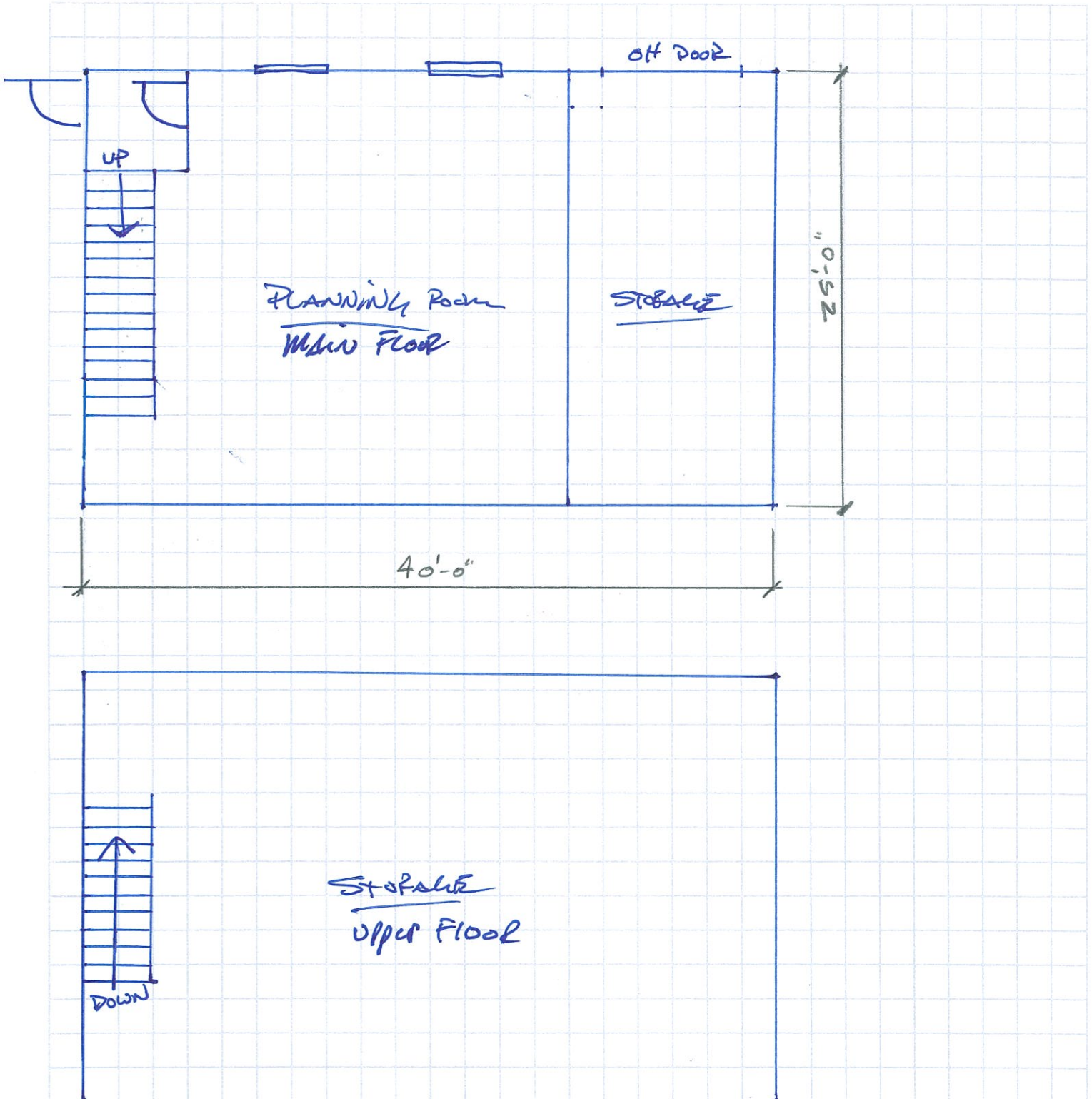
CORRECT. WITH TWO OVERHEAD DOOR TO OUR SHOP DIRECTLY TO THE EAST OF THE NEW BUILDING, WE NEED ENOUGH ROOM TO MAKE THE TURNING RADIUS TO THE DOORS.







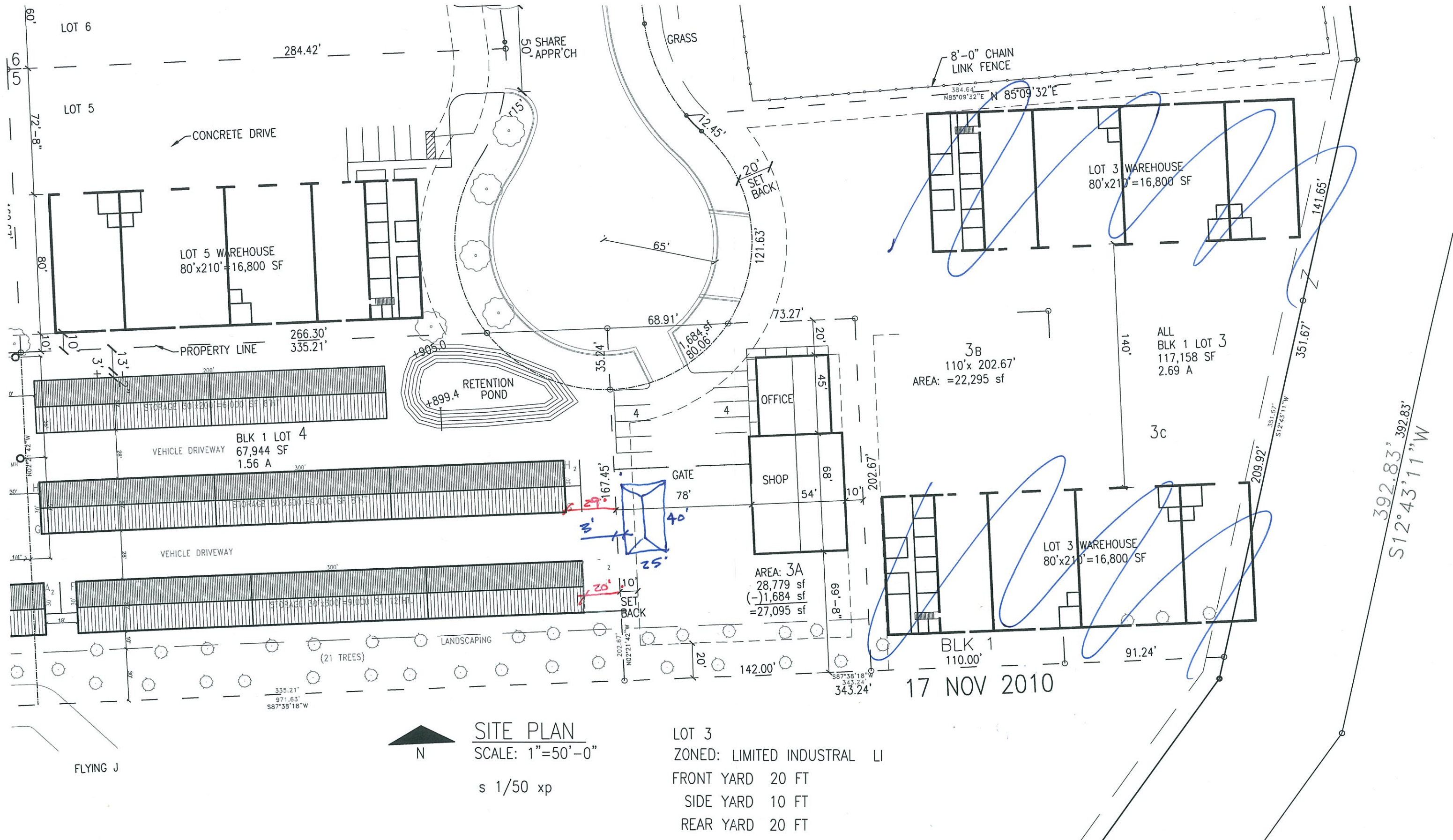












**BOARD OF ADJUSTMENT  
BY-LAWS  
CITY OF FARGO  
(ADOPTED AUGUST 27, 2013)**

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.

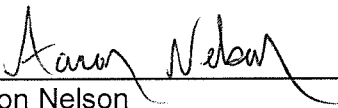


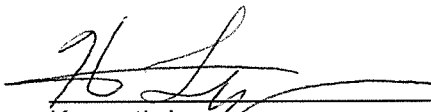
## VIII. CONTROL OF LAW

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.

  
\_\_\_\_\_  
Aaron Nelson  
Secretary, Board of Adjustment

  
\_\_\_\_\_  
Kenneth Lepper  
Chairperson, Board of Adjustment