

MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planning Coordinator *AN*
Maggie Squyer, Assistant Planner
DATE: August 16, 2019
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, August 27, 2019 at 9:00 a.m. in the Commission Chambers at Fargo City Hall. If you are not able to attend, please contact staff at (701) 241-1474 or planning@FargoND.gov. Thank you.

BOARD OF ADJUSTMENT
Tuesday, August 27, 2019 9:00 a.m.
Commission Chambers
AGENDA

1. Approve Minutes of July 23, 2019 Meeting
2. New Business
 - a) Appeal of an Administrative Decision
Appellant claims that staff erred in denying a sign permit application.
3. Other Business
4. Adjournment

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

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

BOARD OF ADJUSTMENT MINUTES

Regular Meeting:

Tuesday, July 23, 2019

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 9:00 a.m., Tuesday, July 23, 2019.

The Members present or absent were as follows:

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

Absent: Mike Mitchell

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of June 25, 2019

Member Boreen moved the minutes of the June 25, 2019 Board of Adjustment meeting be approved. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

Item 2: New Business

No new business was presented.

Item 3: Other Business

a) Annual Nomination and Elections of Officers

-Chairperson

Member Boreen moved Michael Love be nominated as the Board of Adjustment Chairperson. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

-Vice-Chairperson

Member Love moved Deb Wendel-Daub be nominated as the Board of Adjustment Vice-Chairperson. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

Item 4: Adjournment:

Member Boreen moved to adjourn the meeting at 9:02 a.m. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

CITY OF FARGO
Board of Adjustment
Appeal of an Administrative Decision Staff Report

Item No: 2.a

Date: August 16, 2019

Appellant: Arch Simonson

Status: Board of Adjustment – August 27, 2019

Summary of Record

Overview:

A sign permit application was submitted by Arch Simonson (the appellant) to the Building Inspections Department for the replacement of an existing sign at 3810 Main Avenue in Fargo (the subject property). Upon review by City staff, the proposed sign modification was found to not be in compliance with the requirements of the Fargo Sign Code and the application was denied. The appellant subsequently filed an appeal of the administrative decision regarding the denial of the sign permit application. This appeal of administrative decision is presented to the Board of Adjustment in accordance with Section 20-0916 of the Fargo Land Development Code.

Background:

The appellant owns and operates a gas station at the subject property, 3810 Main Avenue. In addition to signage attached to the building and accessory structures, the subject property also contains two freestanding signs, located on the northwest and northeast corners of the property. The current gas station was constructed in 2004, replacing a previous gas station at this location, and the most recent sign permit was issued for this property in 2005. Since then, the Fargo Sign Code was written and adopted in 2011, replacing the City's previous sign code.

More recently, in 2016, the appellant submitted a formal request to the Building Inspections Department to replace the freestanding sign in the northwest corner of the property. Upon review, the request was denied because the existing sign was non-conforming with the Fargo Sign Code and the replacement sign would not be in compliance with the requirements of the Fargo Sign Code. Specifically, the sign would exceed the amount of total sign area allowed for the property and the sign would exceed the number of allowable freestanding signs on the property. Then, in May 2019, the appellant again submitted an application to replace the freestanding sign on the northwest corner of the property, which was again denied. The appellant then filed an appeal of an administrative decision regarding the denial of the sign permit application.

Question Before the Board:

Did staff err in the denial of the appellant's sign permit application?

Exhibits:

The following exhibits are included as part of this staff report and are attached:

- Exhibit 1 – Appellant's application for appeal of an administrative decision
- Exhibit 2 – Email correspondence with appellant regarding burden of persuasion, suggestion to provide supporting documentation, and process for review of appeals.
- Exhibit 3 – Zoning map and aerial image of the subject property.

Relevant Facts

Staff believes that the following facts are relevant to the Board's consideration of this appeal:

1. The property is located within the GC (General Commercial) zoning district.
2. There are currently two (2) freestanding signs on the subject property.
3. The subject property currently contains over 800 square feet of signage.
4. The subject property has frontage on only one (1) street.
5. The subject property has 175 feet of street frontage.
6. The façade of the primary building on the subject property is approximately 1,728 square feet in area.

Relevant Code Provisions

Staff believes that the following sections of the Fargo Land Development Code are relevant to the Board's consideration of this appeal:

Section 20-1304.A.3. – Sign Face Area

For a freestanding sign, the sign face area shall include the frame, if any, but shall not include:

- a. A pole or other structural support unless such pole or structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.*
- b. Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscaping, building or structural forms complementing the site in general.*

Section 20-1307.A.5. – On-Premise Signs; Size Limitations

In all zoning districts other than the foregoing, the aggregate sign face area allowed per parcel shall not exceed 2.5 square feet of signage per one linear foot of street frontage or 30 % of the façade of the primary structure, whichever is greater. The area of the façade is determined by multiplying (a) the lesser of the height of the front elevation of the principle structure's first floor or twenty feet by (b) the width of the façade.

Section 20-1307.C.3.b. – Permitted Sign Types; Freestanding Sign

A parcel fronting only on one public street shall have no more than one freestanding sign unless the street frontage exceeds 300 feet, for which case a second freestanding sign is allowed. An additional freestanding sign is allowed for each additional 300 feet of frontage over 600 feet.

Section 20-1310 – Non-Conforming Sign

- A. A sign that does not conform to this article is a non-conforming sign. See also Section 20-1302A. A non-conforming sign that is permanently affixed to the ground or to a building may continue to be used, except that the non-conforming sign:*
 - 1. Shall not be replaced, except in conformity with the provisions of this ordinance;*
 - 2. Shall not be enlarged, altered or rebuilt except in conformance with this ordinance, but it may be repaired to the extent necessary to maintain it in a safe and sanitary condition; and*
- B. Damage to Non-conforming Sign*
 - 1. Any non-conforming sign shall not be rebuilt, altered or repaired after damage exceeding 50% of its replacement cost at the time of destruction. The owner of such sign must apply for a new sign permit in accordance with the permitting procedures in order to erect or construct a conforming replacement sign.*
 - 2. Any non-conforming sign may be rebuilt or repaired after damage not exceeding 50% of its replacement cost, provided that the non-conformity is not increased in any way.*

Section 20-0916.G – Review and Action of Appeals by the Board of Adjustment

Appeals of Administrative Decisions shall be taken to the Board of Adjustment. The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence. A concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official.

Staff Analysis

Staff finds that the freestanding sign that the appellant proposes to replace is a non-conforming sign and therefore cannot be replaced unless the replacement sign can be constructed so as to conform with the provisions of the Fargo Sign Code. The appellant's proposed replacement sign does not comply with the provisions of the Fargo Sign Code and therefore cannot be approved. The sign proposed on the subject property does not comply with the Fargo Sign Code in two respects. First, the subject property contains more signage than is currently allowed by the Fargo Sign Code. Second, the subject property contains more freestanding signs than are allowed by the Fargo Sign Code.

The subject property is allowed up to a maximum of 518 square feet of total signage, based on the size limitations of Section 20-1307.A.5 of the Fargo Sign Code. This number is 30% of the façade of the existing building. The subject property currently contains about 812 square feet of total signage. With the removal and replacement of one of the freestanding signs, the subject property would have a total of around 800 square feet of signage, which would not comply with the 518-square-foot maximum.

The subject property has a total of 175 linear feet of frontage along one public street—Main Avenue. Section 20-1307.C.3.b of the Fargo Sign Code allows a maximum of one freestanding sign for properties that have frontage along only one public street, unless the property's street frontage exceeds 300 feet. Since the subject property has less frontage than 300 feet, the subject property is restricted to only one freestanding sign. However, the subject property currently has two freestanding signs. Therefore, the freestanding signs are non-compliant with this section of the Fargo Sign Code until such time that one of the two freestanding signs is removed. Once removed, a second freestanding sign would not be allowed to be reestablished.

Within his application for appeal, the appellant states four reasons for the appeal. Staff's response to each of these are as follows:

- 1) *"The sign is existing and I am only requesting to re-image it."*
The term "re-image" does not appear within the Fargo Sign Code. Staff finds that the proposed changes to the existing sign constitutes the removal of the existing sign and the placement of a new sign. While some of the support structure and foundation may be reused for the new sign, these structures contain no messaging and are not part of the sign face area, as defined within Section 20-1304.A.3 of the Fargo Sign Code.
- 2) *"The total sign sq. ft. of my new re-imaged signage area is actually less (See Exhibit 'A' Before/ After)."*
The fact that the new sign would have less square footage is irrelevant. The Fargo Sign Code requires that if a sign is to be rebuilt it must be in conformance with the Fargo Sign Code. Regardless of size, the fact remains that the proposed new sign would not conform to the provisions of the Fargo Sign Code. The subject property is currently allowed up to a maximum of 518 square feet of total signage

and a maximum of one (1) freestanding sign. The proposed new sign would still put the subject property over the 518-square-foot limit and would be one more freestanding sign than allowed.

- 3) *“My competitor 200' to the west (Petro Serv) has 3 signs (Exhibits 'A, B, C') and substantially greater sign sq. ft. overall. I only have 2 signs and far less sign sq. ft.”*

The amount of signage existing on other properties within the City is irrelevant to the permitting of signage on any given property. Adjacent properties would be subject to the same provisions of the Fargo Sign Code. It is likely that the signage on the adjacent property was established prior to the adoption of the current sign code. Non-conforming signs that were legally established prior to the adoption of the Fargo Sign Code are allowed to continue to exist as is, just like the appellant's signs are allowed to exist as is. Along these same lines, if a similarly situated new gas station of the same size as the subject property were to be established today, less signage would be permitted on the property of the new gas station than is currently located on the subject property.

- 4) *“All that I'm requesting is to do is re-image an old existing sign to make it more aesthetically pleasing and effective. Please grant my request.”*

As noted above, the term “re-image” does not appear within the Fargo Sign Code. Staff finds that the proposed changes to the existing sign constitutes the removal of the existing sign and the placement of a new sign. Additionally, the granting of sign permits is not based on subjective judgments such as aesthetic qualities or effectiveness, nor does the Fargo Sign Code allow such judgments by staff.

While the appellant may disagree with the City's sign regulations and has stated reasons for why he would like for his proposed sign permit application to be approved, staff contends that the appellant has submitted no evidence or argument to demonstrate that staff has erred in the administration of the Fargo Sign Code. As expressly stated within Section 20-0916.G of the Land Development Code, *“The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.”*

Staff Recommendation

Staff recommends that the Board of Adjustment affirm staff's decision to deny the appellant's sign permit application on the basis that the proposed sign replacement would violate the requirements of the Fargo Sign Code.

APPEAL OF AN ADMINISTRATIVE DECISION

Property Owner Information	Representation Information (if applicable)
Name (printed): <u>SIMONSON STATION STORES</u>	Name (printed): <u>ARCH SIMONSON</u>
Address: <u>3810 MAIN AVE.</u>	Address: <u>GRAND FORKS</u>
	Company: <u>SIMONSON'S</u>
Primary Phone: <u>701-280-3116</u>	Primary Phone: <u>701-741-7834</u>
Alternative Phone: _____	Alternative Phone: <u>701-772-3971</u>
Fax: _____	Fax: _____
Email: _____	Email: <u>ARCH@GoSimonson.com</u>
	<input type="checkbox"/> Same as property owner

Location of property involved in the appealed decision (if applicable)

Address: 3810 W. MAIN Ave.

Legal Description (attach separate sheet if more space is needed):

Item for Appeal (attach separate sheet if more space is needed)

REVIEW OF SIGN PERMIT, - REFERENCE CODE
2TRE3V

Reason for Appeal (attach separate sheet if more space is needed)

Please See SEPARATE Sheet ATTACHED.



Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.

Owner (Signature):  Date: 7-1-2019

Representative (Signature): _____ Date: _____

Office Use Only

Date Filed: _____ Pre-Application Meeting Date: _____

Application Complete: ☐ Yes ☐ No Reviewed By: _____

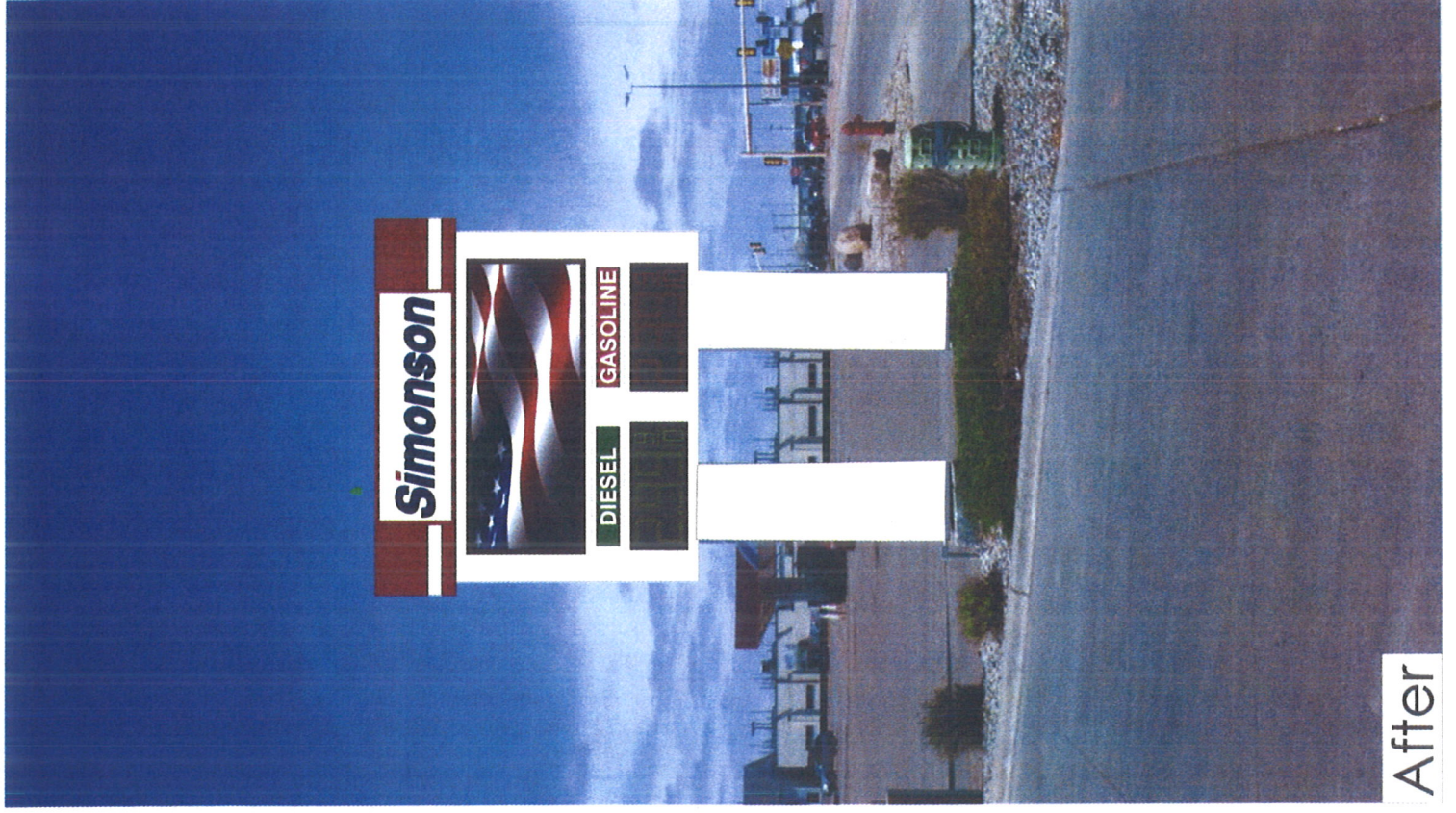
Reason for Appeal

- The sign is existing and I am only requesting to re-image it.
- The total sign sq. ft. of my new re-imaged signage area is actually less (See Exhibit 'A' Before/After).
- My competitor 200' to the west (Petro Serv) has 3 signs (Exhibits 'A, B, C') and substantially greater sign sq. ft. overall. I only have 2 signs and far less sign sq. ft.
- All that I'm requesting is to do is re-image an old existing sign to make it more aesthetically pleasing and effective. Please grant my request.

EXHIBIT 'A'



Before



After

EXHIBIT B

SUBWAY

Drive Thru

NOW HIRING

Phone



EXHIBIT 'C'



EXHIBIT 'D'



5-HOUR
ENERGY
2/\$5

UNLEADED

2.49⁹/₁₀

E-85

1.99⁹/₁₀

DIESEL

2.84⁹/₁₀

AUTOMOTIVE
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auto.com

AVIS

ALL CITY
AUTO CENTER

Aaron Nelson

From: Arch R Simonson <Arch@gosimonson.com>
Sent: Friday, July 19, 2019 10:43 AM
To: Aaron Nelson
Subject: RE: Appeal of Administrative Decision

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

Thanks Aaron... see you on the 27th.

From: Aaron Nelson <ANelson@FargoND.gov>
Sent: Friday, July 19, 2019 10:40 AM
To: Arch Simonson <Arch@gosimonson.com>
Cc: Melissa Gaulrapp <MGaulrapp@cityoffargo.com>; Maggie Squyer <msquyer@FargoND.gov>
Subject: Appeal of Administrative Decision

Arch,

The City of Fargo Department of Planning & Development has received your application for appeal of an administrative decision regarding denial of a sign permit for the property located at 3810 Main Avenue. Your application is currently scheduled to be heard by the Board of Adjustment at 9:00am on Tuesday, August 27. The purpose of this email is to confirm receipt of your application, to notify you of the time and date of the Board of Adjustment meeting, and to provide you with some additional information regarding the appeal process.

The process for appeals of administrative decisions is outlined within Section 20-0916 of the Fargo Municipal Code, which is available online:

https://library.municode.com/nd/fargo/codes/code_of_ordinances?nodeId=CH20LADECO_ART20-09DEREPR_S20-0916APADDE. There are a few things within this section that you will want to note.

First, please be aware that *"An appeal shall be sustained only if the Board of Adjustment finds that the administrative official erred"* and that, *"The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant."* It is up to you to demonstrate how staff erred in making the determination to deny your sign application. Staff will present the Board of Adjustment with information regarding why the decision was made, and an argument for how no error was made in staff's administration of the Sign Code and denial of your sign permit.

Because of your burden of persuasion, you may wish to provide additional information or materials in support of your appeal. I would suggest that you provide a more detailed description of how you feel staff erred in its determination that your sign permit application did not meet the requirements of the Fargo Sign Code, including the specific section(s) of the Sign Code that staff erred in administering. If you do wish to provide additional information or supporting documentation, please do so within the next two weeks. Your application and all supporting documentation that you've provided (or will provide) will be included within the meeting packet, which will be published and sent to the Board members the week prior to the August 27th meeting.

Second, you will also want to note that, *"A concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the administrative official."* The Board of Adjustment consists of five members. As such, four out of the five Board members must vote in your favor in order for your appeal to be sustained.

Lastly, regardless of the Board of Adjustment's decision, there is a 10-day appeal period. Appeals to the decision of the Board of Adjustment made within 10 days of the decision will be heard by the Board of City Commissioners.

If you have any questions regarding this information or the process for appeals, please let me know. I would be happy to discuss any of this information in more detail.

Thank you,

Aaron M. Nelson, AICP

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