



PLANNING AND DEVELOPMENT

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MEMORANDUM

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

The next meeting of the Board of Adjustment will be held on Tuesday, September 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 (701) 241-1474 or planning@FargoND.gov. Thank you.

BOARD OF ADJUSTMENT
Tuesday, September 26, 2017 9:00 a.m.
City Commission Room
AGENDA

1. Approve Minutes of August 22, 2017 Meeting
2. New Business
 - a) Variance Request – 1701 Dakota Drive North
Request for a variance of Section 20-0705 of the Land Development Code. The requested variance is to allow for the construction of a driveway that would encroach into the required street-side paving setback area within the UMU, University Mixed-Use, zoning district.
3. 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:

August 22, 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, August 22, 2017.

The Members present or absent were as follows:

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

Absent: Mike Mitchell

Also present: Jodi Bertrand, Bruce Taralson

Chair Love called the meeting to order.

Item 1a: Approve Order of Agenda

Member Ford-Dunker moved the Order of Agenda be approved as presented. Second by Member Wendel-Daub. The motion was declared carried.

Item 1b: Approval of Minutes: Regular Meeting of July 25, 2017

Member Wendel-Daub moved the minutes of the July 25, 2017 Board of Adjustment meeting be approved. Second by Member Ford-Dunker. The motion was declared carried.

Item 2: Old Business

a) Variance Request – 3931 and 3949 37th Avenue South: DENIED

Request for a variance of Article 20-06 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.

Planner Aaron Nelson presented the staff report, an overview of the request, and an update of the submitted plans. Mr. Nelson stated staff is recommending denial on the basis that the review considerations of Section 21-0603 have not been satisfied.

Discussion was held regarding the change to the submitted plan now being a stand-alone building, and the FEMA base floodplain elevation requirements.

Inspections Administrator Bruce Taralson spoke on behalf of the Inspections Department and presented information on the code for building compliance.

Stormwater Engineer Jody Bertrand spoke on behalf of the Engineering Department.

Applicant representative Nick Dietrich, Dietrich Construction, LLC, and Wayne Erickson, Foss Architecture, spoke on behalf of the requested variance.

Motion #1: Member Ford-Dunker moved the findings of staff be accepted and the variance be denied as requested. Second by Member Boreen. Upon call of the roll Members Ford-Dunker and Love voted aye. Members Wendel-Daub, Boreen, and Lundberg voted nay. The motion failed for lack of a majority.

Motion #2: Member Wendel-Daub moved to approve the variance request with the condition that geo technical data supports that there is no uplift that would affect the grade around the building and that all building parameters meet the requirements of City departments. Second by Member Boreen. Upon call of the roll Members Boreen, Lundberg, and Wendel-Daub voted aye. Members Ford-Dunker and Love voted nay. The motion to approve the variance failed for lack of a supermajority.

Item 3: Adjournment:

Member Lundberg moved to adjourn the meeting at 9:35 a.m. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

City of Fargo - Board of Adjustment Variance Staff Report

Item No: 2.b **Date:** September 19, 2017

Address: 1701 Dakota Drive North

Legal: Portion of Lots 11 & 12, Block 18, Beardsley's Addition

Owner(s)/Applicant: Bill Bienek

Reason For Request: To construct a driveway within the required paving setback area.

Zoning: UMU, University Mixed-Use

Status: Board of Adjustment Public Hearing: September 26, 2017

UMU Paving Setback Standards		Proposed Paving Setback Standards	
Street Side Setback:	15'	Street Side Setback:	4'
Interior Side Setback:	8'	Interior Side Setback:	8'
Rear Setback:	6'	Rear Setback:	6'

Background:

As part of a proposed townhome development, the applicant would like to construct a driveway that would be partially located within the required street-side paving setback area. The property is located at 1701 Dakota Drive North and is within the UMU, University Mixed-Use, zoning district. Section 20-0705(D)(4) of the Land Development Code requires vehicular circulation paving to be set back at least 15 feet from the street-side property line in the UMU zoning district. The applicant, however, would like to construct the driveway as close as 4 feet from the street-side property line. Accordingly, the applicant is requesting a variance in order to allow the proposed driveway to encroach 11 feet into the required street-side paving setback area. (Note: The applicant had originally requested to encroach 13 feet into the paving setback, but has since revised this request in order to accommodate the required 4-foot-wide landscaped parking buffer.)

Criteria for Approval & Staff Analysis:

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

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

The subject property is a wedge-shaped corner lot located at the intersection of 17th Street North and Dakota Drive North. The lot width at the front of the property, along 17th Street N, is 100 feet wide and the lot narrows down to about 12 feet wide at the rear property line, which abuts a public alley.

While the purpose of the alley is to provide vehicular access to adjacent properties, vehicular access from the alley is essentially prohibited on the subject property due to the required paving setback being wider than the width of the subject property at the alley-abutting rear property line.

Additionally, vehicular access is prohibited from 8th Avenue North, since this street is functionally classified as a collector street. The Land Development Code's guideline for driveway spacing along collector streets in residential areas is 150 feet.

The UMU zoning district requires a minimum residential density of 18 units per acre, which equates to at least 4 dwelling units to be included with the redevelopment of this property. With the narrow western half of the property being encumbered by building and paving setbacks, much of the lot is unusable for building or parking. Staff finds that these combined factors result in the need for the requested variance

and that these conditions 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. **(Criteria Satisfied)**

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

Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date staff has not received any comments on this application. **(Criteria Satisfied)**

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

As mentioned above, the required paving and building setbacks render the western portion of the lot unbuildable. Additional restrictions on vehicular access and minimum density requirements result in limitations on development. The applicant is proposing to construct a five-unit townhome with individual garages. Staff finds that the strict application of the applicable standards will constitute an unnecessary physical hardship because the property cannot be used for such townhomes without coming into conflict with the applicable site developments standards. **(Criteria 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;

According to the applicant, placing the driveway 4 feet from the interior-side property line is the minimum variance that will overcome the hardship. The proposed variance would be the minimum variance needed to construct the driveway in the location proposed by the applicant. **(Criteria Satisfied)**

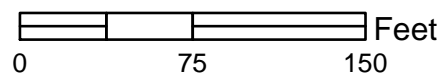
Staff Recommendation: "To accept the findings of staff and approve the requested variance to allow paving to encroach 11 feet into the required 15-foot street-side paving setback on the basis that the review criteria of Section 20-0914.E.1 have been satisfied."



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

1701 Dakota Drive North





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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): Donald E. Dick (for Silverstone LLC) Date: 9/5/17
Note: A nonrefundable filing fee of \$185.00 must be accompanied with the application at time of submittal.

Office Use Only

Date Filed: 9/6/17 Planning Contact: AN Nonrefundable Fee \$185.00: paid Ch# 5357

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):	Silverstone LLP
Address:	PO Box 1826, Fargo, ND 58107
Primary Phone:	701-306-7649
Alternative Phone:	
Fax:	
Email:	bill.bienek@fumic.com

Representation Information: (if applicable)	
Name (printed):	Bill Bienek
Address:	PO Box 1826, Fargo, ND 58107
Primary Phone:	701-306-7649
Alternative Phone:	
Fax:	
Email:	bill.bienek@fumic.com

Location of property requesting a variance:	
Address:	1701 Dakota Drive North, Fargo, ND
Zoning District:	UMU
Legal Description:	S 30 FT OF 11 & ALL OF 12

Proposed Variance Information:

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

Please describe difference between the standard and the proposed (e.g. The standard is 10 ft. and my project would propose a 7' setback).
The standard is 15' and my project would propose a setback of 2'.

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.)

This project is a five unit three-story townhouse typical of the series of three-story townhouses being built in the UMU zoning district. However, this roughly triangular shaped lot faces both 17th St. N. and the alley and requires entrance from the alley which is approximately 12'-6" wide and which accesses two double garages. Dakota Dr. North does not currently appear to allow access and backout of garages, so this is the only way that access is available to the west units' garages. The shape of the lot and requirements of the land use development code for setbacks, the most effective way to provide three bedroom units in each townhouse is to utilize the design shown on the attached site plan.

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;

The triangular lot on which we are proposing to put five three-story townhouses is not a typical lot shape between Dakota Drive North and the University. Typical lots are rectangular shape. In fact entrance onto the site is not allowed at the alley if the 15' setback is enforced. The three townhouse units facing 17th Street North would not meet the density requirement of Article 20-05.C.1.a as they are currently designed.

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

The design does not materially change the existing access driveway in relation to the property to the north. Because the City sidewalk and the boulevard to the south of the property is 9' away from the property line, it does not appear that this will be a problem for pedestrians and bicycle circulation and will provide a buffer of 11' from the edge of the sidewalk to the access drive for the majority of the length of the access drive. The property to the south of Dakota Dr. is 3 and 4 story multi-family.

- 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;

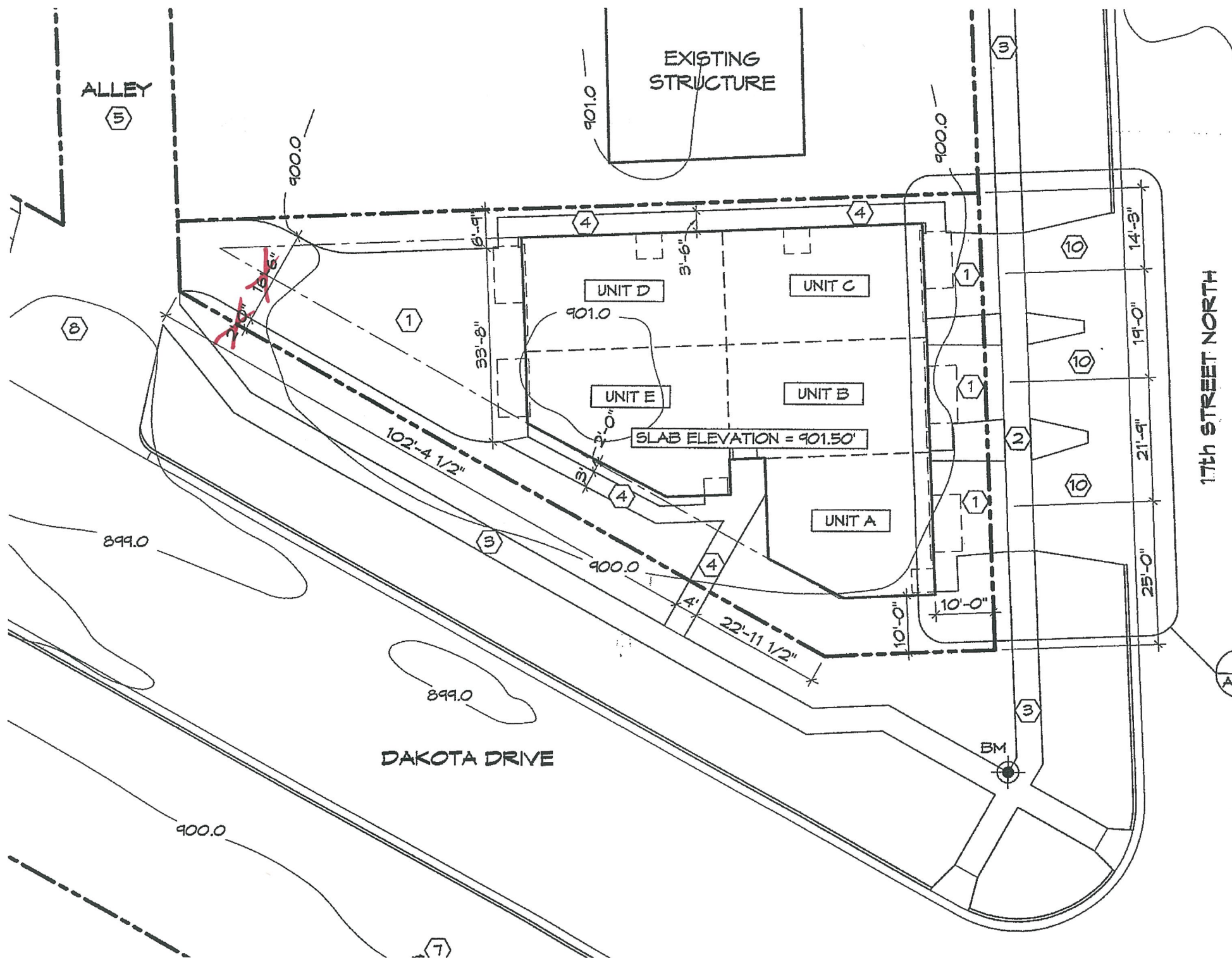
An unnecessary physical hardship is imposed with the application of the applicable standards because the property cannot be used for its intended use without coming into conflict with the applicable minimum standards. This is evidenced by the reduction in allowable density due to the triangular shape of the lot, the requirement for meeting minimum density standards and the requirement for meeting minimum setback standards.

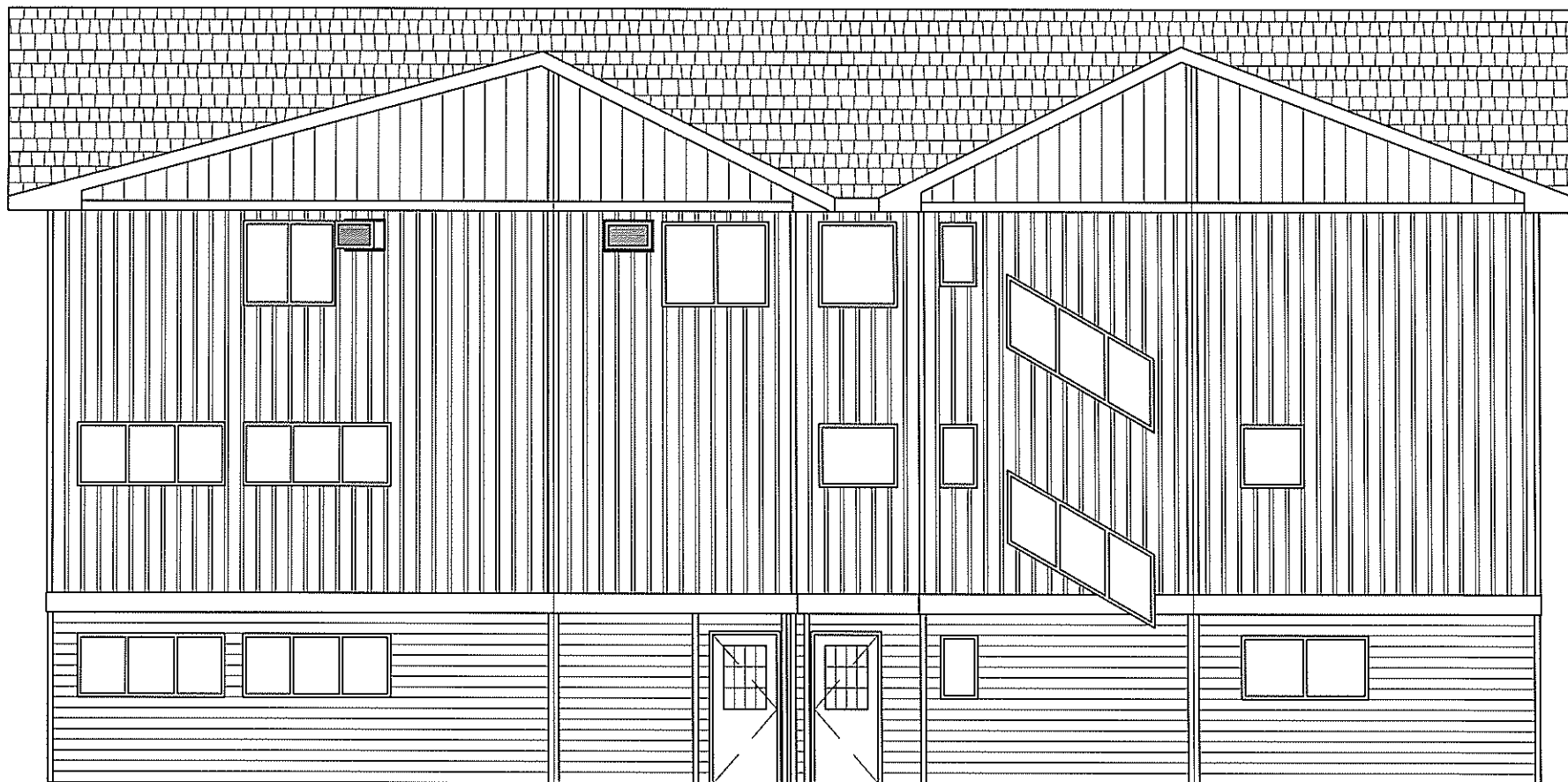
- 4) The variance desired will not adversely affect the public health, safety or general welfare; and

It does not appear that the variance requested will adversely affect the public health, safety and general welfare. The request does not modify any streets, the alley, the existing city sidewalk and the proposed concrete driveway is in roughly the same location as the existing gravel parking lot.

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

The variance in the minimum variance will overcome the hardship without creating a more hazardous access path to the garage door of the southwestern most unit. We have calculated that relocating the edge of the pavement 4'-0" from the southernly property line would not materially decrease the safety factor on accessibility to the garage parking. If the commission wants to approve four feet for the setback, the project will still work out for the Owner.





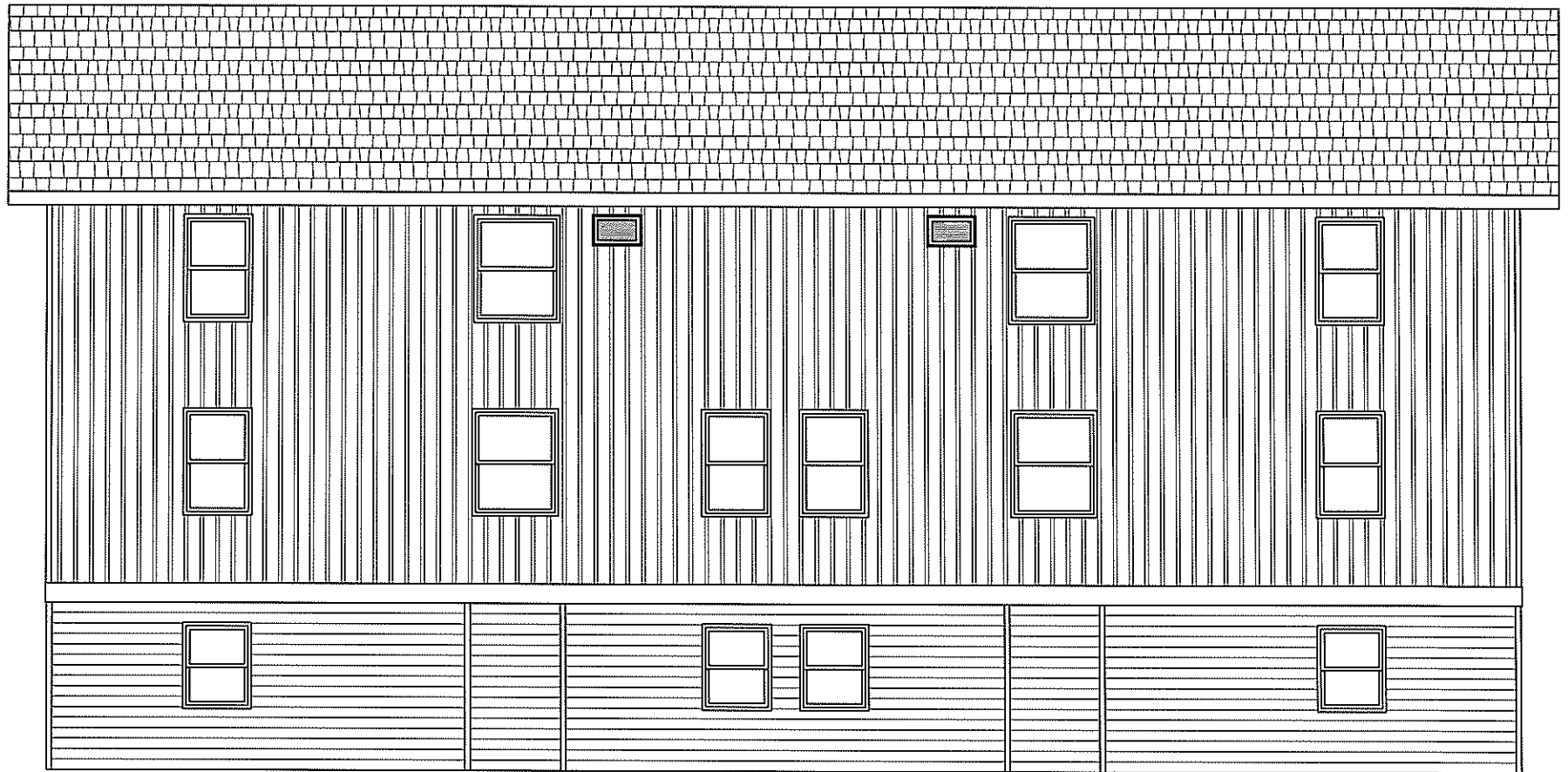
SOUTH ELEVATION (ALT)

SCALE: 1/8" = 1'-0"



EAST ELEVATION (ALT)

SCALE: 1/8" = 1'-0"



NORTH ELEVATION

SCALE: 1/8" = 1'-0"



WEST ELEVATION (ALT)

SCALE: 1/8" = 1'-0"