

## **BOARD OF ADJUSTMENT MINUTES**

**Regular Meeting:**

**Tuesday:**

**September 27, 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, September 27, 2016.

The Members present or absent were as follows:

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

Absent: Mark Lundberg, Mike Mitchell

Chair Wendel-Daub called the meeting to order.

**Item 1: Approve Order of Agenda**

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

**Item 2: Approval of Minutes: Regular Meeting of August 23, 2016**

Member Ford-Dunker moved the minutes of the August 23, 2016 Board of Adjustment meeting be approved. Second by Member Love. All Members present voted aye and the motion was declared carried.

Before proceeding with Item 3, Member Love noted a potential conflict of interest regarding the variance request being heard today. Chair Wendel-Daub asked City Attorney Erik Johnson to explain the law pertaining to these types of potential conflicts.

Erik Johnson reviewed the State of North Dakota's statutory provisions and the procedures the Board would follow when addressing potential conflicts of interest. He explained the Board will need to vote on whether to waive any conflict of interest, and to therefore allow Member Love to participate in the discussion and to vote. Mr. Johnson also noted that with 4 of the 5 Board Members present today, all Members would be required to vote in order to proceed with the variance request or this application would need to be rescheduled to a future Board of Adjustment meeting.

Member Ford-Dunker moved to waive a conflict of interest and to approve Member Love be allowed to vote on Item 3a. Second by Member Boreen. Upon call of the roll Members Boreen, Ford-Dunker, and Wendel-Daub voted aye. Absent and not voting: Members Lundberg and Mitchell. The motion was declared carried.

Before proceeding with Item 3, Chair Wendel-Daub addressed the applicant explaining with 4 of the 5 Board Members present and the requirement of 4 affirmative votes for a motion to pass in favor his request, the applicant has the option to reschedule. Applicant Jeremy Magelky stated he would like the meeting to proceed.

**Item 3: New Business**

**a) Variance Request – 3101 Peterson Parkway North: Request for a variance of Section 20-0501 of the Land Development Code (LDC). The requested variance is to allow construction of an accessory building that would encroach into the required interior-side setback areas within the SR-2, Single-Dwelling Residential zoning district: DENIED**

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

Board discussion ensued with questions regarding any special code requirements in relation to the close proximity to the existing house, and the type of foundation to be laid.

Plan Reviewer Chris Rose, Inspections Department, addressed the questions and reviewed the specific code requirements that must be met.

Applicant Jeremy Magelky spoke on behalf of the application. Mr. Magelky referred to a letter included in the packet, from a neighbor on the west side of the property, who is in favor of the proposed building.

Further discussion by the Board concerned other possible locations on the property for placement of the building; decreasing the size of the building; and removal of existing trees.

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

**Item 5: Other Business**

No other business was discussed.

**Item 6: Adjournment:**

Member Love moved to adjourn the meeting at 9:34 a.m. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.