



Planning & Development

225 4th Street North

Fargo, ND 58102

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www.FargoND.gov

BOARD OF ADJUSTMENT
Tuesday, January 28, 2025 | 9:00AM
City Commission Chambers
AGENDA

1. Approve Minutes – December 17, 2024
2. New Business
 - a. Variance Request – 726 40th Street North
 - i. The request at 726 40th Street North, if granted, would allow a new primary structure to encroach in the required interior side setback in the GI, General Industrial zoning district as outlined in 20-05 of Fargo Municipal Code.
3. Other Business
4. Adjourn – Next Meeting: February 25, 2025

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, December 17, 2024

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, December 17, 2024.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Michael Love, Michael Orth, Marcia Pulczinski

Absent: None

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of August 27, 2024

Member Wendel-Daub moved the minutes of the August 27, 2024 Board of Adjustment meeting be approved. Second by Member Pulczinski. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a. Variance Request – 3459 39th Street South

- i. The request at 3459 39th Street South, if granted, would allow a new slab on grade accessory structure to be constructed at a lower elevation than would otherwise be required by the City’s Floodproofing Code, as referenced by Article 21-06 of the Fargo Municipal Code.**

Inspections Director Shawn Ouradnik, presented the staff report and overview of the request.

Member Orth moved the findings of staff be accepted and the variance be approved as requested. Second by Member Boreen. Upon call of the roll Members Wendel-Daub, Boreen, Pulcainski, Orth, and Love voted aye and the motion was declared carried.

Item 3: 2025 Meeting Dates

Chair Love noted that the 2025 meeting dates are included in the packet.

Item 4: Other Business

No other business was presented.

Item 5: Adjournment: Next meeting - January 28, 2025

Member Boreen moved to adjourn the meeting at 9:05 a.m. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

CITY OF FARGO - Board of Adjustment Variance Staff Report

Item No: 2.a	Date: January 23, 2025
Address: 726 40 St N	
Legal Description: A portion of Lot 5, Arndts – Devener Subdivision	
Owner(s)/Applicants: Brian Reinerts on behalf of Jesus Lebaron (Rayco Construction)	
Reason For Request: To allow a new primary structure to encroach in the required interior side setback	
Zoning District: GI, General Industrial	
Status: Board of Adjustment Public Hearing: January 28, 2025	

GI Dimensional Standards	Proposed Structure
Setbacks:	Setbacks:
Front (east): 50'	Front (east): 50'
Interior-Side (north): 20'	Interior-Side (north): 10'
Interior-Side (south): 20'	Interior-Side (south): 20'
Rear (west): 20'	Rear (west): 20'

Background:

The applicant is requesting a variance to allow a new primary structure to encroach into the required interior side setback. The property is located at 726 40th Street North with GI, General Industrial zoning. Section 20-05 of the Land Development Code states that the required interior side setback in the GI, General Industrial district is 20 feet.

The proposal would construct a new 12,000 square foot (50' x 240') primary structure 10 feet from the interior side (north) property line. This proposal at this location would require a variance to allow the new structure to encroach 10 feet into the required 20-foot interior side setback on the north side of the property.



GENERAL LAYOUT
RAYCO SHOP CONDOS
FARGO, ND

PROJECT NO. 2473
DATE: 02.20.24
DESIGNED: [Signature]
DRAWN: [Signature]
CHECKED: [Signature]

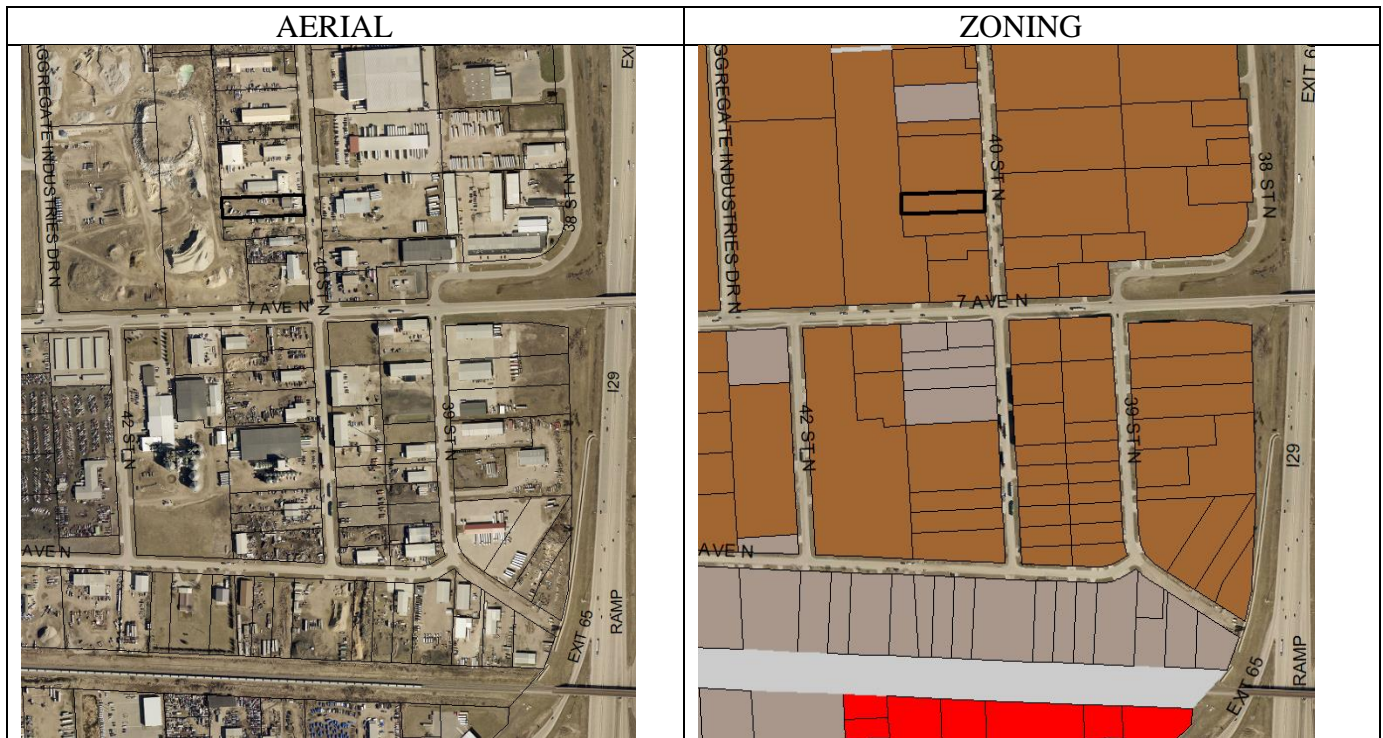
moore
engineering, pc

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 40,990 square feet in area and legally described as a portion of Lot 5, Arndts – Devenor Subdivision. Although the lot sizes vary in this industrial area, the 100’ x 410’ subject property is not unique from other nearby GI, General Industrial zoned properties. The existing 2,500 square foot structure was constructed in 1940 and does encroach in the setback; it is considered legal, nonconforming as it likely met zoning requirements that were in effect at the time of construction.



Staff finds the requested variance does not arise from conditions that are unique to the subject property and requested variance would be a result of the owner’s actions. **(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. **(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;**

The variance is being requested by the applicant to construct a new 12,000 square-foot, primary structure. Staff contends that no hardship exists as the property currently functions with the existing structure and alternatives exist for a new building to meet the required setbacks in the GI, General Industrial zoning district. Alternative building sizes, designs and placement options exist that can meet setback requirements. **(Criteria NOT satisfied)**

d. The variance desired will not adversely affect the public health, safety or general welfare;

Staff has no data that would identify an adverse effect 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 to overcome due to the fact that the property can be (and is currently) used for an allowed use without coming into conflict with applicable site development standards. However, if a hardship was found to exist, the applicant has offered a building design that requests minimum variance desired for the applicant to construct the building. **(Criteria satisfied)**

Staff Recommendation: “To accept the findings of staff and deny the requested variance to allow a new primary structure to encroach into the required interior side setback in the GI, General Industrial zoning district on the basis that the review criteria of Section 20-0914. E.1 (a & c) have not been met.”



Subject Property

7 AVE N

40 ST N

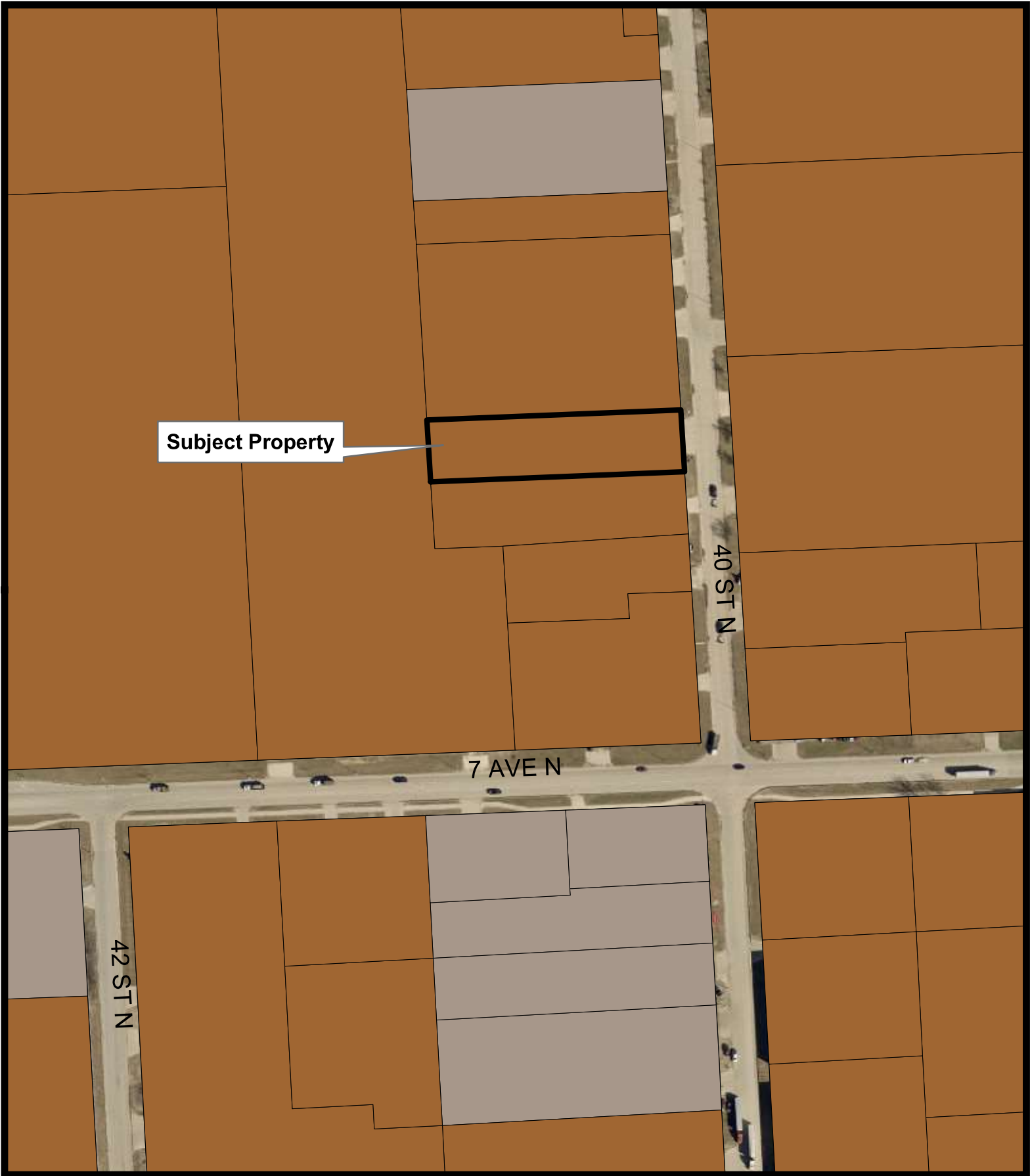
38 ST N

42 ST N

39 ST N

726 40th Street North





Subject Property

40 ST N

7 AVE N

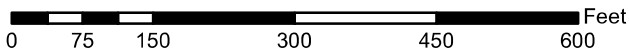
42 ST N



Legend

AG	LC	MHP	SR-2
DMU	LF	NC	SR-3
CC	MR-1	NO	SR-4
GI	MR-2	P/I	SR-5
GO	MR-3	UMU	City Limits

726 40th Street North





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): <u>Jesus Lebaron (Rayco Construction)</u> Address: <u>726 40th St. N, Fargo ND 58102</u> Primary Phone: _____ Alternative Phone: _____ Fax: _____ Email: _____	Representation Information: (if applicable) Name (printed): <u>Brian Reinarts (Moore Engineering)</u> Address: _____ Primary Phone: _____ Alternative Phone: _____ Fax: _____ Email: _____
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Location of property requesting a variance: Address: <u>726 40th St. N, Fargo ND 58102</u> Zoning District: <u>General Industrial</u> Legal Description: <u>ARNDTS-DEVENER PT OF 5 DESC AS FOLL: COMM AT THE SE COR OF SD LT 5; THEN N 03 DEG 29 MIN 22 SEC W ON THE E LN OF SD LT 5 FOR A DIST OF 448.60 FT TO THE PT OF BEG; THEN S 87 DEG 42 MIN 25 SEC W PARA W/ THE N LN OF SD SEC 3 FOR A DIST OF 410.07 FT; THEN N</u>

Proposed Variance Information:

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

General Industrial's side yard setback of 20' for structures.

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

General Industrial zoning side yard setback is 20' for structures and we propose a 10' side yard setback which is allowed in Light Industrial.

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 property is currently zoned General Industrial and is currently being used in that manner for the current owner. There is an existing structure on the site that will remain and is offset 5' from the north property line. That 5-10' side yard structure offset is common throughout this area which is currently zoned GI. There is LI zoning 350' to the north and a large area of LI 550' to the south which allows the 10' side yard setback so this request would not be unique to this area. The project that is being proposed for the property is a 50'x240' shop condo. The variance of a 10' side yard setback would allow for the building to be placed 10' offset from the north property line which would then allow for 18.5' parking in front of each shop and a 20' wide drive lane that would allow for safe vehicle movements within the property. The lot is 100' wide which would make the property difficult to use for additional structures with the current 20' side yard setbacks so with that said we feel that this variance of 10' side yard setback is fitting for the property.



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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

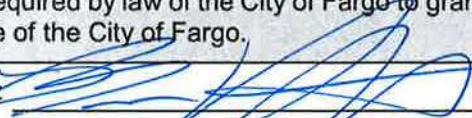
- 1) The application and a nonrefundable fee of \$185 are due at the time of submittal
- 2) Notice of the Public Hearing is mailed to property owners within 300 feet of the proposed site at least 15 days prior to the Hearing and published once a week for two consecutive weeks in the newspaper.
- 3) The 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: 12.31.24

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: _____



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;

What makes this property unique is the 100' width of the lot. This makes it difficult to construct a building, parking and drive lanes with only 60' of buildable space.

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

This variance will not affect adjacent property owners. In fact structure setbacks to the north and south of this property vary from 5-10' from the side yards.

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;

The existing lot width as zoned as G1 will make it difficult to improve the site. The side yard setback takes up 40% of the lots width. This setback doesn't allow for proper development improvements of the property.

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

This variance will not affect the public health, safety or welfare.

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

Yes-This variance allows for allowing safe drive lanes for perspective users as well as it allows the building to be competitive in the shop condo industry by allowing the building to be 50' wide.

NOTES:
LOT COVERAGE (MAX 85%) ~ 78.4%
LANDSCAPING REQUIRED ~ 1 PU PER 1,000 S.F. 41,254/1,000 = 41.3 SO, 42 PU



GENERAL LAYOUT
RAYCO SHOP CONDOS
FARGO, ND

PROJECT No.	24733
DATE	12/27/24
DRAWN BY	RJP
CHECKED BY	BR
REVIEWED BY	

moore
engineering, inc.

