



PLANNING AND DEVELOPMENT

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MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planner *AN*
DATE: November 15, 2016
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, November 22, 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. Thank you.

BOARD OF ADJUSTMENT
Tuesday, November 22, 2016 9:00 a.m.
City Commission Room
AGENDA

1. Approve Minutes of October 25, 2016 Meeting
2. New Business
 - a) Variance Request – 1201 5 Street North
Request for a variance of Section 20-0501 of the LDC. The requested variance is to allow construction of an accessory building that would encroach into the required street-side setback area within the SR-2, Single-Dwelling Residential, zoning district.
3. Other Business
 - a) Update on the draft recommendations of the LDC Residential Task Force
 - b) Consideration of December 2016 Meeting Date
 - c) Consideration of 2017 Meeting Dates
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.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:

October 25, 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, October 25, 2016.

The Members present or absent were as follows:

Present: Matthew Boreen, Russell Ford-Dunker, Michael Love, Mike Mitchell

Absent: Deb Wendel-Daub, Mark Lundberg

Vice Chair Love called the meeting to order.

Item 1: Approve Order of Agenda

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

Item 2: Approval of Minutes: Regular Meeting of September 27, 2016

Member Boreen moved the minutes of the September 27, 2016 Board of Adjustment meeting be approved. Second by Member Mitchell. All Members present voted aye and the motion was declared carried.

Item 3: New Business

a) Variance Request – 1005 27th Street North: Request for a variance of Sections 20-0403(B) and 20-0501 of the Land Development Code (LDC). The requested variance is to allow a proposed 8-foot-tall fence to encroach 3 feet into the required 3-foot fence setback and 5 feet into the required 5-foot interior-side setback within the SR-3, 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. He noted a correction to the background information in the staff report stating that the above property is located in the SR-3, Single-Dwelling Residential zoning district and not in the SR-2, Single-Dwelling Residential zoning district. Mr. Voigt stated staff is recommending denial as review criteria a, b, and c have not been met.

Applicant Brian Schuchard spoke on behalf of the application.

The Board discussed the background of the existing fence, and concerns by an area property owner who shares the fence line.

Richard Melvin spoke on behalf of his brother Don Melvin, in opposition of the variance request. Don Melvin is the property owner on the adjacent side of the proposed fence line extension.

Board discussion continued regarding the process for locating and confirming property line boundaries by a professional land surveyor, and who is responsible for the maintenance along the fence lines.

Plan Reviewer Chris Rose, Inspections Department, noted that if a survey was done, the Inspections Department could verify the location of pins at the time of survey and could verify that the pins are in the right spot at the time the fence was built, if that's what the customer needed.

City Attorney Erik Johnson stated the property owners, not the City, are responsible for maintaining their own property.

Member Boreen moved the findings of staff be accepted and the variance to allow an 8-foot-tall fence within the interior-side setback and rear yard fence setback in the SR-3, Single-Dwelling Residential zoning district be denied, on the basis that the review criteria of Section 20-0914.E.1 (a, b, and c) have not been met. Second by Member Mitchell. Upon call of the roll Members Love, Boreen, Ford-Dunker, and Mitchell voted aye. Absent and not voting: Members Lundberg and Wendel-Daub. The motion was declared carried.

Item 4: Other Business

No other business was discussed.

Item 5: Adjournment:

Member Mitchell moved to adjourn the meeting at 9:36 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.a **Date:** November 15, 2016

Address: 1201 5th Street North

Legal Description: Lot 1, Block 1, Holes 1st Addition

Owner(s)/Applicant: James P. Keal

Reason For Request: To construct a detached garage within the required setback area.

Zoning District: SR-2, Single Dwelling Residential

Status: Board of Adjustment Public Hearing: November 22, 2016

SR-2 Dimensional Standards		Proposed Accessory Structure Standards	
Setbacks:		Setbacks:	
Front:	30' (20' for front-entry garage)	Front:	>30'
Street-Side:	15'	Street-Side:	9'
Interior-Side:	3'	Interior-Side:	3'
Rear:	3'	Rear:	8'

Background:

The applicant, James P. Keal, would like to construct a detached garage within the required street-side setback area at the site of an existing single-family house. The proposed garage would be 38 feet wide and 24 feet deep with three stalls and would take access from the alley in the rear of the property. The property is located at 1201 5th Street North and is within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0501 of the Land Development Code (LDC) requires structures to be set back at least 15 feet from the street-side lot line within the SR-2 zoning district. The applicant, however, would like to construct the proposed accessory garage 9 feet from the street-side property line. Accordingly, the applicant is requesting a variance in order to allow the proposed garage to encroach 6 feet into the required 15-foot street-side setback.

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 6,850 square feet in area, which is 1,150 square feet less than the minimum required lot size of 8,000 square feet in the SR-2 zoning district. In addition, the minimum lot width in the SR-2 zoning district is 60 feet, whereas the subject property is 50 feet wide. Of the 40 single-family lots within 300 feet of the subject property, the median lot area is 8,073 square feet and the median lot width is 56 feet. Aside from having a deficient lot size and lot width for the SR-2 zoning district, which is not a result of the owner’s intentional actions, no other unique conditions were identified.

Although the subject property is a legally “nonconforming lot” (due to having substandard lot area and width), Section 20-1003 of the LDC requires new structures on nonconforming lots to comply with all applicable dimensional requirements. There is 32 feet of buildable space between the 3-foot interior-side setback and the 15-foot street-side setback, which is adequate for the construction of a detached garage. As such, staff suggests that the request for the variance arises from the applicant’s desire to construct a garage that wider than what is permitted, which is not a condition that is unique to the subject property.

Consequently, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the SR-2 zoning district. **(Criterion 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. **(Criterion 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 to construct a detached garage, which is a typical accessory structure permitted with single-family homes. Specifically, the applicant states that the variance is needed in order to provide for sufficient space so that the three stall widths inside the garage can accommodate for the opening of car doors.

However, staff finds that the property can be used for an otherwise allowed use without coming into conflict with applicable site development standards. A garage could be accommodated on the subject property while meeting the dimensional standards of the Land Development Code. The existing house currently sits approximately 80 feet from the rear property line and the lot width is 50 feet. As a result, there is about 77 linear feet of buildable distance between the back of the house and the required rear setback line and there is about 32 linear feet of buildable distance between the interior-side and street-side setback lines. This equates to an accessory building envelop of approximately 2,464 square feet in the rear yard of the property. Staff finds that there is currently enough buildable area behind the existing house to construct a garage without coming into conflict with the applicable site development standards.

Ultimately, staff finds that the strict application of the applicable standards does not constitute an unnecessary physical hardship because the subject property can be used for a garage (as an accessory use) without coming into conflict with applicable development standards. **(Criterion 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. **(Criterion satisfied)**

e. The variance is the minimum variance that will overcome the hardship;

As mentioned above, staff suggests that there is no hardship because a garage could be constructed without coming into conflict with applicable site development standards and the requested variance does not appear to 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 garage in the location proposed by the applicant. **(Criterion satisfied)**

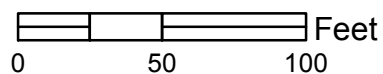
Staff Recommendation: “To accept the findings of staff and deny the requested variance to allow a detached garage to encroach into the required street-side setback within the SR-2 zoning district, on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met.”



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

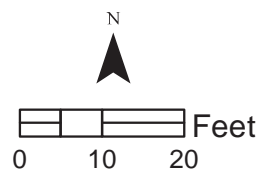
1201 5 Street North





Rear Yard Building Envelope

1201 5 Street 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):

Ch. P. Gm

Date:

10/31/16

Note: A nonrefundable filing fee of \$185.00 must be accompanied with the application at time of submittal.

Office Use Only

Date Filed: *10-31-16*

Planning Contact: _____

Nonrefundable Fee \$185.00: *ck # 1083*

*James P. Keal
1201 5th St. N.
Fargo, ND 58102*

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:		Representation Information: (if applicable)	
Name (printed):	James Keal	Name (printed):	
Address:	1201 5th St N	Address:	
Primary Phone:	701-367-4542	Primary Phone:	
Alternative Phone:	701-446-2019	Alternative Phone:	
Fax:		Fax:	
Email:	jimkeal@hotmail.com	Email:	

Location of property requesting a variance:	
Address:	1201 5th St N, Fargo, ND 58102
Zoning District:	SR-2
Legal Description:	Holes 1st, Lot 1, Block 1

Proposed Variance Information:

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

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 9' side street setback.

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.)

I am proposing the construction of a single story, three stall garage with the dimensions of 38'W X 24'D. Garage will open on alley side and be located 8' from newly paved alley.

Zoning District SR-2 standards are side and rear setback requirement of 3' and a street side setback of 15'. Lot does not meet minimum width (60') or area (8000 sq.') for district. With a lot width of only 50' the width of any allowed garage is a maximum of 32'. This leaves an average stall width of just over 10', which is not practical for opening car doors.

Proposed garage width of 38' allows for average stall width of 12'. This would require a 6' variance to the 15' street side setback.

Proposal improves sight lines to street and sidewalk. Garage will have 8' setback from alley side and 9' street side setback (in addition to 19' width of sidewalk and boulevard to street) improved sight lines over allowed setbacks.

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;

Zoning District SR-2 standards are side and rear setback requirement of 3' and a street side setback of 15'. Lot does not meet minimum width (60') or area (8000 sq.').

Recent traffic increases on 12th Ave North (up 3-400% according to city estimates) leave us waiting considerable lengths of time during peak periods to exit our existing garage. The proposed garage eliminates backing directly onto 12th Avenue and

~~allows use of the alley. Off street parking is not available within a reasonable distance in winter months.~~

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

The request does not adversely impact any adjacent property owners. The existing structure is less than 2' from the alley and less than 7' from the sidewalk. The proposed structure will be further from both property lines than the current condition and

significantly improve sight lines, especially to users of the sidewalk improving safety.

- 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;

Strict application of the applicable setback standard forces a garage width of only 32', leaving a stall width of just over 10',

~~rendering use of the stalls for opening car doors impractical.~~

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

The variance does not adversely affect public health, safety, or general welfare.

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

The 6' street side setback variance allows average stall width of just over 12'.



Ariel view of 1201 5th St N

Existing garage is 20' X 22', is less than 2' from recently paved alley (not shown) and 6' from sidewalk. Exits on to 12th Avenue N.

Proposed garage is 38' X 24', located 3' from North line, 8' from alley, and 9' from sidewalk. Exits on to alley. Location and size shown in black outline is approximate.



WHITE PAPER

Findings and recommendations of the LDC residential task force

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Abstract

In response to a large number of residential variance applications being approved by the City, the Board of City Commissioners formed a task force for the purpose of reviewing existing residential zoning requirements and to provide a set of recommended modifications to those requirements. The task force identified the primary issue as being a disconnect between the city's goals for residential development and the requirements of the Land Development Code (LDC), which results in a lengthy and prescriptive variance process which can yield unpredictable outcomes. While exploring this issue, setbacks, building coverage, and accessory building height were found to be the LDC standards which were most problematic.

While developing possible alternatives to address the specific issues identified, consideration was given to the complexity of possible recommendations and the corresponding time and resource commitment that would be necessary to effectively carry out those recommendations. Ultimately, the task force has proposed phased recommendations of short-, mid-, and long-term amendments to the LDC. Short-term recommendations are intended to be achievable within a few months and include reductions to interior-side setback standards and slight increases to maximum building coverage requirements of the SR-2 and SR-3 zoning districts, as well as moderate increases to accessory structure height and coverage requirements for all residential zoning districts. Mid-term recommendations are intended for a one- to two-year timeframe and include exploration of additional considerations for accessory building height, adding flexibility for accessory structure setbacks, and an evaluation of current setback averaging language. Lastly, long-term recommendations were proposed which were seen as being the most comprehensive way to address the issues identified. However, these long-term recommendations are beyond the task force's scope of review and are intended to be topics of consideration for future large-scale updates to the Land Development Code. One long-term recommendation is to explore the creation of a "traditional neighborhood" residential zoning district (or districts) that would be unique to the core neighborhoods of Fargo. The other long-term recommendation is to explore options for developing an improved project review process that is efficient and that also is able to consider context of design. While differing in scope and timeframe, all of these recommendations are geared towards reaching task force's vision for the city to be able to quickly and efficiently approve residential construction projects that are in line with the adopted policies and goals of the City of Fargo.

Introduction

Background

On November 24, 2014, the Fargo Board of City Commissioners directed staff to create a task force to review codes to adapt to existing and older neighborhoods, in response to a number of previous variance requests which had been appealed to the City Commission. Accordingly, on March 30, 2015, staff presented the Board of City Commissioners with a proposal to establish a task force which would consist of two city commissioners, two planning commissioners, two members of the Board of Adjustment and two members of the Historic Preservation Commission. This proposal was approved by the Board of City Commissioners and over the remainder of the year, four task force meetings were held in order to examine the issue and work towards a possible solution. A fifth and final meeting of the task force was held on [REDACTED], 2016 in order to finalize a proposed recommendation.

Problem Statement

A variance can be described as an exception to a zoning district dimensional standard which is approved by the City on an individual basis. Among other things, to qualify for a variance a physical hardship that is unique to the property must be demonstrated. This requirement is difficult to meet and, as a result, most variance requests are not granted by the Board of Adjustment. Approximately twelve applications for a variance from the LDC dimensional standards are heard each year by the Board of Adjustment, most of which are denied. Of those denials, about half are appealed to the City Commission where the Board of Adjustment's decisions are typically overturned and the variances approved. As a matter of practice, the City Commission will often weigh other policies and factors (other than the variance review criteria) when acting on a variance appeal. This differs from the Board of Adjustment's review process, which is based strictly on the five variance review criteria defined by the Land Development Code (LDC).

In addition to the cases that are heard by the Board of Adjustment, staff members from the Inspections and Planning departments discuss variance options with approximately one potential applicant per week on average during the construction season. Only property owners willing to pay the fee and spend the time to proceed to a variance option submit an application. Of those, only applicants that have the patience and confidence decide to appeal to City Commission. As such, staff believes that there is the potential of varied results for what initially could be a similar application. As a matter of principle, staff strives for consistent application of policies and codes. Accordingly, the following two problem statements were developed by the Task Force in order to define the scope of the issues to be addressed.

Primary Problem Statement

Vision: The City would like to be able to quickly and efficiently approve residential construction projects that are in line with the adopted policies and goals of the City of Fargo.

Issue: Currently, there are many residential construction projects in core neighborhoods which are generally believed to substantially align with city policy and goals, but that cannot be quickly and efficiently approved

because they require a variance due to minor infringement of LDC dimensional standards. While these variances are generally believed to be reasonable, most must be denied by the Board of Adjustment because the review criteria cannot be met, resulting in a lengthy appeals process through the City Commission which consumes time, recourses, and energy of City Commissioners, Board of Adjustment members, home owners, and city staff.

Secondary Problem Statement

Vision: *The City desires that construction and redevelopment within core neighborhoods be done in a manner that is contextually consistent with surrounding properties in order to stabilize, protect, and maintain the historic and unique character of individual neighborhoods.*

Issue: *Within core neighborhoods, there is concern that residential buildings and additions can be constructed that could detract from the surrounding neighborhood because they are not constructed in a manner that is contextually consistent with surrounding properties. These buildings generally tend to stand out when contrasted against the existing neighborhood form, whether due to inconsistent scale, style, materials, etc. As a result, they are typically viewed by neighboring residents as having a negative effect on surrounding property values.*

Process

Study Area

To determine the study area which the Task Force would focus on over the course of this process, the geographic distribution of several factors were examined, including the year of house construction, location of properties for which variances were requested, residential lot size, residential square-footage, and location of properties which have utilized community development programs or rehab funding. Ultimately, the Task Force decided to use the area between 19th Avenue N and Interstate 94 (north-south) and the area between 25th Street and the Red River (east-west) as the general study area to focus on.

Identified Issues

In reviewing historical variance records from the past twelve years, three types of variance requests were identified as being most common. Variances from setback standards made up a vast majority of the applications, followed by building coverage and then accessory building height. Of the requested setback variances, interior-side setback variances were most common. Below is a summary of some of the issues associated with each of these types of dimensional standards.

Setbacks

Setbacks are defined as, “the unobstructed, unoccupied open area between the furthestmost projection of a structure and the property line of the lot on which the structure is located.” As previously mentioned, a majority of variance requests involve the reduction of setback distances, especially interior-side setbacks. Staff suggests that these setback issues are common within the City’s older neighborhoods because most of the existing houses do not comply with current setback requirements, as they were built prior to the adoption of the current zoning code. While traditional urban neighborhoods were developed with houses on smaller lots spaced closely together, the City’s current zoning code is more apt for a suburban style of neighborhood development. In addition, staff suggests that changes in market demand for residential houses have also contributed to the issue. There is an increased demand by homeowners for more living space and additional garage stalls compared to when most of the City’s traditional neighborhoods were developed. Consequently, it is common for homeowners in these older neighborhoods to construct additions onto existing homes or to add or replace older garages with larger ones.

Additionally, current setback requirements can vary among properties depending upon other factors, such as zoning district and/or lot width. There is a wide variety of setback standards among the City’s Single-Dwelling Residential zoning districts (SR-0 to SR-5). Interior-side setbacks, for example, can range from 4 feet to 10 feet. In addition, many of the interior-side setback requirements are determined by the lot’s width. In many cases, this can result in two different interior-side setback requirements for abutting properties, even if neighboring property owners agree to a reduced interior-side setback. Another factor that can affect a property’s setbacks is the provision in the LDC for “setback averaging,” which is presumably intended to create a unified front setback along individual blocks. Unfortunately, this setback averaging provision is not clearly written and is a challenge to administer.

Building Coverage

Building coverage is defined as, “the area of a lot covered by buildings (principal & accessory) or roofed areas.” Similar to setbacks, staff suggests that building coverage issues also result from modern market demands for more space and larger garages in older neighborhoods which have traditionally smaller lots. For example, a 900 square-foot house with a 600 square-foot garage on a 4,000 square-foot lot would exceed the maximum building coverage for the SR-3 zoning district and would therefore not be allowed to expand without approval of a variance.

The LDC also restricts accessory structures from having more building coverage than the primary structure. This creates issues for property owners with small houses who would like additional garage space. It should be noted that attached garages are considered part of the primary structure and are therefore not subject to this restriction.

Building Height

Building height is defined as, “the vertical distance between the average finished grade at the base of the building along the side of the building being measured and: 1) the average height level between the eaves and ridge line of a gable, hip or gambrel roof; 2) the highest point of a mansard roof; or 3) the highest point of the coping of a flat roof.” Most requests for variances of building height maximums are for accessory structures. With a few exceptions, accessory buildings are restricted to a maximum of 15 feet in Single-Dwelling Residential (SR) zoning districts. Although accessory structures are subject to relaxed setbacks when located in the rear yard area, accessory structures are still limited to a maximum height of 15 feet when located within the standard setbacks of the primary structure. This restriction causes issues for property owners who wish to build a taller detached garage, either to store a larger vehicle or to build a second story “bonus room.” Currently, property owners are able to build taller accessory structures by utilizing a gambrel (barn-style) or A-frame roof with low hanging eaves. Although these types of accessory structures meet the letter of the law, this is generally seen as somewhat of a loop-hole which does not meet the intent of the law.

Other Issues

In addition to the dimensional standards outlined above, several other topics were identified by task force members as being potential issues, such as the potential for accessory dwelling units (also referred to as “granny flats”), exemptions for front porches, the context/compatibility of design for variance requests, and the establishment of “build-to” lines as opposed to setbacks. Currently, the LDC is silent on allowing additional dwelling units that are accessory to single-family house; uncovered porches may encroach into required setback areas, but covered porches must comply with setbacks; the design of a building is not a variance review criterion; and build-to lines are not currently required. Although these potential issues are related to residential development in the City’s core neighborhoods, most of these were found to be beyond the scope of analysis for this task force.

Development of Alternatives

Once the primary issues were identified, the task force began to formulate and discuss possible solutions. The possible solution alternatives range in scale from small tweaks to some of the dimensional standards on the simple end, to the development of new processes on the more-complex end. Several examples of possible alternatives are detailed below:

Amended dimensional standards

One option was to simply amend the dimensional standards in order to reduce the requirements for things such as minimum setbacks, maximum height, and maximum building coverage. These types of amendments could be tailored to individual zoning districts. However, amendments made to existing zoning districts would apply within those zoning districts throughout the City, and not just within the study area.

Creation of new zoning district

Creating one or more new residential zoning district(s) is an alternative option to amending the dimensional standards of existing zoning districts. In reviewing other municipalities' zoning codes, several examples of "traditional residential" zoning districts were found. In other cities, these traditional residential zoning districts are applied exclusively to historic/older neighborhoods and allow for a more-traditional pattern of development compared to suburban or newer patterns of development.

Creation of an administrative waiver process

An alternative to amending any of the LDC dimensional standards would be to create a new process to allow deviation from the zoning district dimensional standards of the LDC. Currently, there are a couple of different types of zoning standards that may be modified via an administratively reviewed waiver process, such as *residential protection standards* and *off-street parking standards*. In both cases, the decision of the zoning administrator may be appealed to the Planning Commission, and ultimately to the City Commission. By creating a similar waiver process for deviations from the LDC dimensional standards, unique criteria or requirements could be established in order to compel a higher standard of design whenever a dimensional waiver is granted. A waiver process may allow an opportunity to integrate design considerations (such as context, character, and/or compatibility of design) into the review process. For example, if a waiver were to be granted to allow a taller detached structure, maybe a specific roof type/pitch would be required along with additional setback distances and landscaping.

Amendment of the variance approval criteria

Similar to creating a waiver process, amending the variance approval criteria is another option. Currently, the variance review criteria are somewhat restrictive due to the fact that before a variance may be granted, it must be found that a physical hardship exists which is unique to the property and that prevents the normal use of the property. The variance review criteria could be amended to reduce the degree to which a hardship needs to be shown. This option is limited, however, due to variance requirements that are outlined within the North Dakota Century Code. Although the City of Fargo's variance criteria expand upon the State requirements, the showing of an unnecessary hardship would still be required for the granting of a variance per the Century Code.

No action

A final alternative would be to take no action. When making a determination on the best course of action, it is often helpful to compare alternatives to a “no action” alternative. A no action alternative can be used as a benchmark when considering the pros and cons of each of the alternative options.

DRAFT

Recommendations

In considering the possible alternative options, the degree of change and the corresponding time commitment that would be required of staff were important factors. With the City's continuous rate of growth, staff and commissioners are currently having to juggle many competing priorities. Accordingly, the task force and staff from the Department of Planning & Development have developed multiple recommendations ranging from short-term to long-term. Short-term recommendations include minor edits to the LDC text that should alleviate some of the problem. Mid-term recommendations also represent minor edits to the LDC text; however, these proposed edits could be expanded upon to address related issues. These recommendations are listed as mid-term since additional policy discussion should be had in order to identify the scope of such edits and to work through the details of the ordinance language itself. It is anticipated that mid-term recommendations could be addressed within the next one or two years. Lastly, long-term alternatives involve the creation of new processes and zoning districts through larger revisions to the LDC. The short-term recommendations have been specifically defined, whereas the mid- and long-term recommendations are abstract and would require additional analysis and direction from city leadership.

Short-Term Recommendations

There are several simple edits that could be made to some of the zoning district dimensional standards which could allow for a limited increase in the intensity of development within single-family zoning districts, and thereby alleviate some of the demand for variances. The task force recommends edits to the interior-side setback and building coverage requirements of the SR-2 and SR-3 zoning districts, as well as edits to the accessory structure height and coverage requirements for all residential zoning districts. Each of these four recommended changes are outlined below.

Interior-Side Setback

Currently, the SR-2 and SR-3 zoning districts require an interior-side setback of 10% of the lot's width or 10 feet, whichever is less. The task force recommendation is to reduce this requirement to 10% of the lot's width or 5 feet, whichever is less. This amendment would have no effect on properties which are less than 50 feet wide since, in those cases, the 10% would be less. For lots wider than 50 feet, however, this proposed amendment would allow a reduced setback. For these lots, the reduced setback will allow for a larger building envelop with more room for expansion. A smaller setback is also more consistent with traditional neighborhoods.

Building Coverage

Currently, the SR-2 and SR-3 zoning districts restrict building coverage to a maximum of 30% and 35% of the lot area, respectively. The task force recommends increasing both of these maximums by 5% in order to allow additional opportunity for limited expansion within these zoning districts. Increased building coverage on single-family lots is more typical of traditional urban neighborhoods.

Accessory Building Coverage

Currently, building coverage of detached accessory structures may not exceed that of the principal building, with some exceptions. The task force recommends allowing accessory structure building coverage of up to 700 square feet regardless of the building coverage of the primary structure, in order to allow at least a two-stall garage for houses have a building coverage of less than 700 square feet. To this end, the task force recommends that the LDC be amended to so that building coverage of detached accessory structures may not exceed that of the principal building or 700 square feet, whichever is greater.

Accessory Building Height

Currently, accessory structures in SR-1 through SR-5 zoning districts are restricted to a maximum height of 15 feet. In the short term, staff recommends allowing a two-foot increase to the maximum accessory structure height from 15 feet to 17 feet in order to accommodate the wall height needed for larger 8-foot-tall residential garage doors.

Mid-Term Recommendations

There are additional fairly-quick edits that could be made to the Land Development Code in order to alleviate some of the demand for variances. These recommendations are based on discussion had by the task force, but that are related to topics that are outside of the scope of this task force and/or require additional input and direction from City leadership. It is the intent of the Task Force that if the City Commission wishes to pursue some or all of these mid-term recommendations, that additional direction be given to either the Task Force or City staff to further evaluate and define these recommendations.

Accessory Building Height

In addition to allowing a slight increase to the maximum accessory building height in the short-term, the task force also recommends that a more-comprehensive review of accessory structures be conducted in the mid-term. Considerations should be made for the overall height or number of stories for accessory structures. Many variances are requested for the purpose of constructing usable space in the second story of an accessory garage. However, two-story accessory buildings could have the potential to dominate the surrounding area, especially in neighborhoods predominated by single-story houses. One possible way to address overly tall accessory structures would be to restrict the ridge line of a gable, hip, or gambrel roof to an overall maximum of 20 feet in height. The intent of creating a maximum ridge line height is to close (or shrink) the loop-hole which allows two-story accessory structures built with low-hanging eaves. For example, today, if the eaves of the roof extend to the ground, the ridge line could be constructed to 30 feet in height.

Accessory structures also provide opportunity for additional intensity and density within the developed and serviced areas of the City, which is in line with some of the goals of the Go2030 Comprehensive Plan. Accessory dwelling units (also known as ADUs or “granny flats”) are becoming increasingly common across the nation. While reviewing accessory building height requirements, staff recommends also having a deeper policy discussion on the potential opportunities and benefits that accessory structures could provide.

Accessory Structure Setbacks

In addition to height, it is also recommended that consideration also be given to allowing flexibility for accessory structure setbacks. One option may be to create an administrative review process similar to the LDC's current process for administrative review of minor parking reductions. This option would involve 1) staff review of a proposed deviation from the accessory structure setback requirements within a set of defined parameters or criteria, 2) notification and appeal opportunity for neighboring property owners, and 3) a defined process for the Planning Commission or Board of Adjustment to review appeals of staff's decisions.

Setback Averaging

As referenced in the *Identified Issues* section of this report, the LDC currently includes a provision for "setback averaging" which is not clearly written and is therefore tough to administer. It is staff's recommendation that the merits of having such a provision be evaluated for possible removal from the LDC. If, however, it is found that such a provision is needed, staff recommends that the requirements be simplified and rewritten to improve the understanding of such requirements and to improve the consistency of administration of requirements.

Long-Term Recommendations

It was generally recognized by the task force that a more comprehensive update to the Land Development Code would be necessary in order to most properly align the City's goals (as expressed by the City Commission and as outlined in the Go2030 Comprehensive Plan) with zoning and development requirements. However, because a comprehensive rewrite of the Land Development Code is outside of the scope identified for this task force, staff has drafted several long-term recommendations that are related to residential development, specifically within the City's older neighborhoods.

Creation of traditional neighborhood residential zoning district

Staff's first long-term recommendation is to create a traditional neighborhood residential zoning district (or districts) that would allow for the customization of dimensional standards in traditional neighborhoods. The purpose of such a zoning district would be to encourage and allow residential development that would be consistent with the dimensions and intensity of traditional neighborhoods, but that also respects the design and character of such historic places. While the task force's primary objective was to analyze the current dimensional standards as they relate to older residential areas, there was also clear desire for there to be sensitivity towards the character of these established neighborhoods. This concern regarding design and character is reflected in the task force's adoption of the secondary problem statement. Staff suggests that some of the components and lessons learned from the City's current Historic Overlay zoning districts could be uniformly applied to such a traditional neighborhood residential zoning district.

Creation of an improved review process

Even with the adaption of all other recommendations presented, there will still undoubtedly be situations where deviation from the zoning standards are requested. Based on the visions presented in the task force's primary and secondary problem statements, it is desirable for there to be an improved

review process which is quick and efficient while also integrating context of design into the review process. Such a review process could take a variety of forms, whether it would involve special permitting, zoning map amendment, administrative review, etc. Regardless of the form such a process would take, it is staff's recommendation that the process should somehow encourage quality design. The task force recognized that context and design play a key factor in how a building project or redevelopment is perceived to impact a neighborhood.

DRAFT

MEMORANDUM

TO: ALL DEPARTMENTS

FROM: KRISTI SYLSKAR, PLANNING AND DEVELOPMENT DEPARTMENT

DATE: DECEMBER 17, 2015

SUBJECT: 2016 BOARD OF ADJUSTMENT MEETING SCHEDULE

Listed below are the Board of Adjustment meeting dates for calendar year 2016.

2016 Meeting Schedule

Board of Adjustment Meetings	
	January 26
	February 23
	March 22
	April 26
	May 24
	June 28
	July 26
	August 23
	September 27
	October 25
	November 22
	*December 22
Board of Adjustment meetings will be held the 4th Tuesday of each month at 9:00 a.m. in the City Commission Room, City Hall.	
*December meeting to be held on December 22, 2016 due to Holiday	

MEMORANDUM

TO: ALL DEPARTMENTS

FROM: ALBERT GIBSON, PLANNING AND DEVELOPMENT DEPARTMENT

DATE: NOVEMBER 15, 2016

SUBJECT: 2017 BOARD OF ADJUSTMENT MEETING SCHEDULE

Listed below are the Board of Adjustment meeting dates for calendar year 2017.

2017 Meeting Schedule

Board of Adjustment Meetings	
	January 24
	February 28
	March 28
	April 25
	May 23
	June 27
	July 25
	August 22
	September 26
	October 24
	November 28
	*December 19 or 21
Board of Adjustment meetings will be held the 4th Tuesday of each month at 9:00 a.m. in the City Commission Room, City Hall.	
*December meeting to be held on December 19 or 21, 2017 due to Holiday	