

MEMORANDUM

TO: Board of Adjustment
FROM: Maggie Squyer, Assistant Planner
Aaron Nelson, Planning Coordinator
DATE: November 17, 2020
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be a virtual meeting held on Tuesday, November 24, 2020 at 9:00 a.m. in the City Commission Chambers at Fargo City Hall and online. If you are not able to participate in the meeting, please contact staff at (701) 241-1474 or planning@FargoND.gov. Thank you.

BOARD OF ADJUSTMENT Tuesday, November 24, 2020 9:00 a.m. Commission Chambers & Online AGENDA

1. Approve Minutes of August 26, 2020 Meeting
2. New Business
 - a) Variance Request – 513 10th Street South
Request for a variance of Section 20-0504 of the LDC. The requested variance is to allow a building addition to encroach into the required interior side setback in the MR-3, Multi-Dwelling Residential, zoning district.
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, August 25, 2020

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, August 25, 2020.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen (via conference call), Jared Heller (via conference call), Michael Love, Mike Mitchell

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of July 28, 2020

Member Wendel-Daub moved the minutes of the July 28, 2020 Board of Adjustment meeting be approved. Second by Member Mitchell. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a) Variance Request – 615 11th Avenue North - WITHDRAWN

Request for a variance of Section 20-0501 of the LDC. The requested variance is to allow a shed to exceed the maximum allowable building coverage in the SR-3, Single-Dwelling Residential, zoning district.

This was the date and time set for a Hearing on an application requesting a variance for property located at 615 11th Avenue North; however, the applicant has withdrawn the request.

b) Variance Request – 3201 33rd Street South: APPROVED WITH CONDITIONS

Request for a variance of Article 21-06 of the Municipal Code. The requested variance is to allow for the construction of a building addition at a lower elevation than would otherwise be required by the City's Floodproofing Code.

Chair Love abstained from voting on this item.

Planning Coordinator Aaron Nelson presented the staff report and an overview of the request. Mr. Nelson reviewed the Floodproofing Code Standards and stated staff is recommending approval upon conditions that the applicant agree to a waiver of liability against the City.

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

Inspections Administrator Bruce Taralson spoke on behalf of the Inspections Department. He noted one additional condition for the recommended motion that the

project needs to meet the criteria set by FEMA for substantial improvement that the improvement does not exceed 50% of the value of the current building.

Applicant representative Brian Pattengale, Houston Engineering, spoke on behalf of the requested variance, and noted no issues with the conditions.

Member Wendel-Daub moved the findings of staff be accepted and the variance be approved on the basis that the review considerations of Section 21-0603 have been satisfied, with the conditions that the applicant sign and submit a waiver of liability against the City and the project meet the FEMA criteria requirements for substantial improvement. Second by Member Heller. Upon call of the roll Members Mitchell, Boreen, Heller, and Wendel-Daub voted aye. Member Love abstained from voting. The motion was declared carried.

Item 3: Other Business

None presented.

Item 4: Adjournment:

Member Heller moved to adjourn the meeting at 9:15 a.m. Second by Member Mitchell. 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 17, 2020

Address: 513 10th Street South

Legal Description: Lot 3, Block 41, Northern Pacific Addition

Owner(s)/Applicants: Jordan Green

Reason For Request: A building addition that would encroach into the required interior side setback

Zoning District: MR-3, Multi-Dwelling Residential

Status: Board of Adjustment Public Hearing: November 24, 2020

MR-3 Dimensional Standards	Proposed Structure
Setbacks:	Setbacks:
Front (east): 25'	Front (east): 23'-2"
Interior-Side (north): 10'	Interior-Side (north): 13'-9"
Interior-Side (south): 10'	Interior-Side (south): 2'
Rear (west): 20'	Rear (west): 68'-9"

Background:

The applicant would like to construct an addition to his home that would be partially located within the required interior side setback. The property is located at 513 10th Street South and is within the MR-3, Multi-Dwelling Residential, zoning district. Section 20-0504 of the Land Development Code states that the setback is 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. The proposed plan would place the addition two feet away from the interior (south) property line. Accordingly, the applicant is requesting a variance to allow the addition to encroach 8 feet into the required interior 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 legally described as Lot 3, Block 41, Northern Pacific Addition. The property is 6,496 square feet in area but only 46.4 feet wide, which is 3.6 feet less than the required MR-3 lot width of 50 feet. The applicant points out that the proposed addition would continue the existing line of the house, which is located two feet north of the southern property line and was constructed prior to his ownership of the property.

Although the lot is narrower than what is required for MR-3 lots in new subdivision, it is not uncommon to find narrow lots in the older parts of Fargo. While the existing structure appears to encroach eight feet into the interior side setback, staff finds that the requested variance does not arise from conditions that are unique to the subject property (**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 received two calls inquiring about the project and no 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;**

The variance is being requested in order for the applicant to construct an addition on the back of his house, which is a typical use permitted by-right in the MR-3 zoning district. Staff contends that no hardship exists as the property is capable of accommodating a building addition to the west while still meeting the requirements of the LDC.

Ultimately, staff suggests that the strict application of the applicable standards should not constitute an unnecessary physical hardship because the subject property can be used for, and currently is used for, an allowed use without conflict with the LDC. **(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 were found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the addition as proposed by the applicant. **(Criteria satisfied)**

Staff Recommendation: “To accept the findings of staff and deny the requested variance to allow the proposed addition to encroach into the required interior side setback in the MR-3 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met.”





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): <u>JORDAN W GREEN</u>	Name (printed): _____
Address: <u>513 10TH ST S</u>	Address: _____
Primary Phone: _____ Alternative Phone: _____	Primary Phone: _____
Fax: _____	Alternative Phone: _____
Email: _____	Fax: _____
	Email: _____

Location of property requesting a variance:
Address: <u>513 10TH ST S</u>
Zoning District: <u>MR-3</u>
Legal Description: <u>LOT 3 BLOCK 41 KINGS SUBDIVISION</u> <u>NORTHERN PACIFIC ADDITION</u>

Proposed Variance Information:

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

SIDE 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).

STANDARD IS 10', I PROPOSE 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.)

SEE APPENDIX A



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;

SEE APPENDIX B

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

SEE APPENDIX C

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;

SEE APPENDIX D

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

SEE APPENDIX E

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

SEE APPENDIX F

Appendix A

The proposed project, an addition to the back of the house, would create space for a usable kitchen and address other issues with the house in its current state of disrepair. The proposed addition would continue the existing line of the house, 2'0" off the south lot line. Over the years, the house has been converted into a multi-unit rental and then was de-converted back to single family property prior to the current ownership. This, along with the age and condition of the home, has created many issues that need correction to revitalize the property into a viable single family home.

The first goal of the project is to expand the kitchen to provide space for modern amenities and adequate countertop space, as well as room for a kitchen table, a necessity for any single family home. The project will also allow for updating the basement stairs to meet current code, as the current stairs are far steeper and narrower than code permits, with insufficient overhead clearance. The next issue being addressed is the main floor half bathroom which currently has a door opening over the staircase to the basement, creating a serious safety hazard. Upstairs, the project rectify code issues in the full bathroom by allowing for proper clearances around all fixtures. The addition will also create enough space to add a shower, while currently there is only a tub, making the bathroom functional. The final issue resolved by the project is expanding a bedroom that is functionally too small and expanding its closet to a walk in closet.

This proposed variance is justified because it revitalizes the house and contributes to the stabilization of the core neighborhood. If approved, the end result will transform a once dilapidated property that had defaulted on taxes into a modernized, functional, and beautiful home.

Appendix B

The lot is 46.4' wide, narrower than most lots in the neighborhood, and is less than the 50'0" minimum in the land development code for zone MR-3. This means the remaining space within the setbacks is also less than the standard minimum. As the house was constructed in 1896 and has been 2'0" off the southern lot line since it was built, the existing condition is not the result of the owner's actions.

Appendix C

If approved, this project will simply extend the existing wall to the west, maintaining the existing setback. It will not affect the rights of the adjacent property owner because it will not encroach further towards the neighboring house. There will also be no additional windows along the south wall, maintaining the current privacy of their side yard.

Appendix D

The combination of the existing placement of the house and the required setbacks for zone MR-3 would make an addition impossible without said addition being significantly narrower than or offset from the existing house. This addition will also overcome the physical hardships of inadequate kitchen space, unsafe and non-code compliant stairs, undersized bedroom, and non-code compliant bathrooms.

Appendix E

The public health, safety, and general welfare will not be adversely affected because the addition will not encroach closer to the adjacent structures limiting the chance of fire spreading. The extension will also be clad in fireproof stucco and there will be no new window or door openings in the sidewall. It will also not impede access between adjacent homes.

Appendix F

Because of the placement of the house on the lot, any addition continuing the lines of the house would need to follow the existing setback of 2'0".

