

**MEMORANDUM**

**TO:** Board of Adjustment  
**FROM:** Aaron Nelson, Planning Coordinator *AN*  
Maggie Squyer, Assistant Planner *ms*  
**DATE:** November 19, 2019  
**RE:** Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, November 26, 2019 at 9:00 a.m. in the Commission Chambers at the **NEW** Fargo City Hall. If you are not able to attend, please contact staff at (701) 241-1474 or [planning@FargoND.gov](mailto:planning@FargoND.gov). Thank you.

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**BOARD OF ADJUSTMENT**  
**Tuesday, November 26, 2019 9:00 a.m.**  
**Commission Chambers**  
**AGENDA**

1. Approve Minutes of October 22, 2019 Meeting
2. New Business
  - a) Variance Request – 1350 2<sup>nd</sup> Street North  
*Request for a variance of Section 20-0501 of the LDC. The requested variance is to allow an attached garage to encroach into the required rear and interior-side setback within the SR-2, Single-Dwelling Residential, zoning district.*
3. Other Business
4. Adjournment

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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](http://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, October 22, 2019**

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, October 22, 2019.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Russell Ford-Dunker, Michael Love, Mike Mitchell

Absent: Matthew Boreen

Chair Love called the meeting to order.

**Item 1: Approval of Minutes: Regular Meeting of August 27, 2019**

Member Ford-Dunker moved the minutes of the August 27, 2019 Board of Adjustment meeting be approved. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

**Item 2: New Business**

**a) Variance Request – 703 and 705 10th Avenue North: DENIED**

***Request for a variance of Section 20-0501 of the LDC (Land Development Code). The requested variance is to allow a future townhome project to encroach into the rear setback within the MR-3, Multi-Dwelling Residential zoning district.***

Assistant Planner Maggie Squyer presented the staff report and reviewed the criteria used during staff's analysis of the application. Ms. Squyer stated staff is recommending denial, as review criteria (a) and (c) have not been met.

Applicant Nate Anderson, Uptown Lofts, spoke on behalf of the application.

Discussion was held on alternative configurations of the townhomes and consideration to reduce the number of townhomes to six.

Member Ford-Dunker moved the findings of staff be accepted and the variance be denied to allow the proposed addition to encroach into the required rear setback area in the MR-3, Multi-Dwelling Residential zoning district on the basis that review of Section 20-0914.E.1 (a and c) have not been met. Second by Member Wendel-Daub. Upon call of the roll Members Wendel-Daub, Ford-Dunker, Mitchell, and Love voted aye. Absent and not voting: Member Boreen. The motion was declared carried.

**b) Appeal of a Land Management Plan – 430 22nd Street South: DENIED**

***Appeal of an approved Land Management Plan that allows property owners to plant non-traditional landscaping, as defined in City Ordinances 11-0805 through 11-0812.***

City Forester Scott Liudahl presented the appeal and gave a background on the application, land management plans, and the process for approving and appealing them. Mr. Liudahl stated that he has met with both parties and a supplemental agreement was drafted.

Discussion was held regarding how this case is a Board of Adjustment item and how the Board is to review it. Chair Love clarified that this case works like an appeal of an administrative decision, and the Board is to evaluate if City staff erred in issuing the land management plan permit.

Member Ford-Dunker moved the findings of staff be accepted and the land management plan/permit and the supplemental agreement be approved as presented. Second by Member Mitchell. Upon call of the roll Members Mitchell, Ford-Dunker, Wendel-Daub, and Love voted aye. Absent and not voting: Member Boreen. The motion was declared carried.

**Item 3: Other Business**

No other business was presented.

**Item 4: Adjournment:**

Member Wendel-Daub moved to adjourn the meeting at 9:21 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

<b>Item No:</b> 2.a	<b>Date:</b> November 19, 2019
<b>Address:</b> 1350 2 <sup>nd</sup> Street North	
<b>Legal Description:</b> Lot 20, Block 6, Holes 1 <sup>st</sup> Addition	
<b>Owner(s)/Applicants:</b> Timothy Flakoll	
<b>Reason For Request:</b> An attached garage addition that would encroach into the required rear and interior-side setback	
<b>Zoning District:</b> SR-2, Single-Dwelling Residential	
<b>Status:</b> Board of Adjustment Public Hearing: November 26, 2019	

SR-2 Dimensional Standards	Proposed Structure
<b>Setbacks:</b>	<b>Setbacks:</b>
<b>Front (east):</b> 30'	<b>Front (east):</b> 30'
<b>Interior-Side (north):</b> 5' or 10% (5')	<b>Interior-Side (north):</b> 3'
<b>Interior-Side (south):</b> 5' or 10% (5')	<b>Interior-Side (south):</b> 5'
<b>Rear (west):</b> 25'	<b>Rear (west):</b> 8'-4"

### Background:

The applicant would like to construct a new attached garage and mudroom which would be partially located within the required rear and interior-side setback. The property is located at 1350 2<sup>nd</sup> Street North and is within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0501 of the Land Development Code requires that primary structures be set back at least 25 feet from the rear lot line and 5 feet or 10% of the lot width (whichever is less) from the interior-side property line in the SR-2 zoning district. The subject property is 50 feet wide, therefore requiring an interior-side setback of only 5 feet. The proposed addition would place the garage 8 feet and 4 inches away from the rear lot line and 3 feet away from the northern interior-side lot line. Accordingly, the applicant is requesting a variance to allow the proposed addition to encroach 16 feet and 8 inches into the required rear setback and 2 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 20, Block 6, Holes 1<sup>st</sup> Addition. The property is 7,000 square feet in area, which is 1,000 square feet less than the minimum lot size of 8,000 square feet for the SR-2 zoning district. In addition, the property has a lot width of 50 feet, which is 10 feet shorter than the minimum 60-foot lot width. Overall, the subject property does not currently conform to all of the dimensional standards of the Land Development Code (LDC). If the subject property were 10 feet wider, making it the minimum lot width required in the SR-2 zoning district, the applicant may not have needed to request a variance of the interior-side setback.

The applicant points out that the proposed garage design respects the style of the neighborhood by keeping the new garage in the same location as the original detached garage, which is now unusable due to storm damage. It is also worth noting that the proposed garage addition would meet the minimum 3-foot setback requirement for both the rear and side yard if it were detached. When located within the rear yard, accessory structures (such as a detached garage) may be located as close as 3 feet to the rear and

interior-side property lines. However, since the proposed garage is attached to the house, the LDC considers the garage to be part of the primary structure and therefore must meet the standard 25-foot rear setback and 5-foot interior-side setback.

While a similar detached garage at the proposed location may be permitted by right, the proposed garage will be attached to the house and therefore must abide by the standard setbacks, not the accessory structure setbacks. Ultimately, staff finds that the requested variance does not arise from conditions that are unique to the subject property. Although the lot size is substandard for the SR-2 zoning district, this condition is not unique to the subject property, especially within the City's older neighborhoods. **(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 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 replace an existing detached garage with an attached garage, which is a typical use permitted by right in the SR-2 zoning district. Staff contends that no hardship exists as the property is capable of accommodating off-street parking 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 was found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the attached garage 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 rear and interior-side setback area in the SR-2 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>Timothy J. Flakoll</u>	Name (printed): _____
Address: <u>1350 2nd Street North</u>	Address: _____
Primary Phone: _____	Primary Phone: _____
Alternative Phone: _____	Alternative Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Location of property requesting a variance:
Address: <u>1350 2nd Street North</u>
Zoning District: <u>SR-2</u>
Legal Description: <u>Parcel No. 01-1360-01740-000</u>
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### Proposed Variance Information:

What Land Development Code Standard are you seeking a variance? (e.g. setback, lot coverage, height)  
See attachment for responses beyond this point.

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

Rear setback for garage addition. Interior side setback for garage addition. ~~Maximum building coverage.~~

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 attachment

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**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 conditions under which this variance is requested is very common in this type and era of neighborhood. Existing lot coverage restrictions are not conducive to improvements necessary for current life styles with needs for larger garages along with features and conveniences expected today.

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

This condition is common in the neighborhood and several new garages built using the setback guidelines for detached garages. Many nearby garages have increased building coverage beyond what is allowed.

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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 garage is unusable do to storm damage and its size.

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4. The variance desired will not adversely affect the public health, safety, or general welfare; and Proposed property improvements will improve public health, safety and general welfare. As well as contribute to the overall improvement of Fargo's housing stock.
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5. The variance is the minimum variance that will overcome the hardship.

The variance will increase the allowable lot coverage by 156.5 SF.

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## Attachment

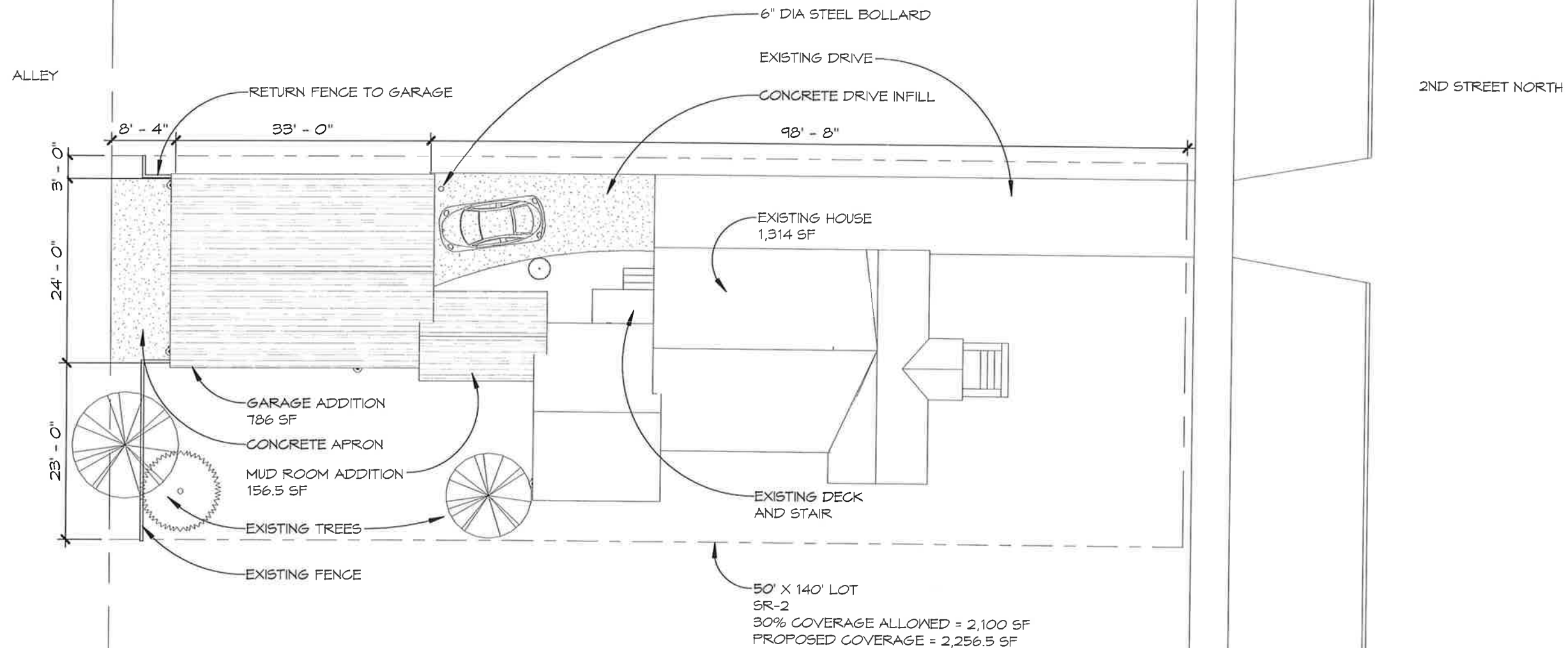
### Flakoll Addition Variance Application

#### Project Explanation and Justification for Variance

The proposed project consists of a mud room addition connecting to a new garage. The garage replaces an existing detached garage that is adjacent to the alley at the rear of the lot. The proposed garage will continue to be adjacent to the alley and include vehicle access from the alley. An existing driveway off 2<sup>nd</sup> Street North will remain allowing continued access to the garage from the street. The lot is 50-feet wide which is less than what is required for a SR-2 lot and contributes to the challenge of meeting setback requirements.

The lot is narrow and long and is typical of pre-war single-family homes with a detached garage in the back yard just off the alley. The proposed design respects that concept by keeping the garage to the rear in the same location in a detached fashion. The proposed garage would be within the 3-foot minimum setbacks for both rear and side yard had it been detached.

Therefore, in order to add additional space to meet the needs of current life styles while respecting the spirit of this era, the owner is requesting these 3 variances.



## FLAKOLL ADDITION

1350 2ND ST N  
FARGO, ND

### REVISIONS

PROJECT # : B0813ND  
DATE: 10/11/19  
DRAWN BY: MCT  
CHECKED BY: KM

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### SITE PLAN

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