

BOARD OF ADJUSTMENT
Tuesday, May 28, 2024 | 9:00AM
City Commission Chambers
AGENDA

1. Approve Minutes – January 23, 2024
2. New Business
 - a. Variance Request – 97 23rd Avenue North
 - i. The request at 97 23rd Avenue North, if granted, would allow an overhead structure (gazebo/pergola) to encroach in the required Front Setback in the SR-2, Single-Dwelling Residential zoning district as outlined in 20-05 of Fargo Municipal Code.
3. Other Business
4. Adjourn – Next Meeting: June 25, 2024

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, January 23, 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, January 23, 2024.

The Members present or absent were as follows:

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

Absent: None

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of October 24, 2023

Member Heller moved the minutes of the October 24, 2023 Board of Adjustment meeting be approved. Second by Member Orth. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a. Variance Request – 3377 39th Street South: APPROVED

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

Planning Coordinator Kim Citrowske presented the staff report and overview of the request.

Applicant representative Andrew Thill, Lowry Engineering, spoke on behalf of the application.

Discussion was held regarding water and sewer connections and the acknowledgment of liability form.

Applicant Michael Casper spoke on behalf of the application.

Member Orth moved the findings of staff be accepted and the variance be approved as requested. Second by Member Orth. Upon call of the roll Members Wendel-Daub, Heller, Orth, and Love voted aye. Absent and not voting: Member Boreen. The motion was declared carried.

Item 3: Other Business

Chair Love indicated that this would be Member Heller's last meeting and thanked him for his service to the Board of Adjustment.

Item 4: Adjournment:

Member Heller moved to adjourn the meeting at 9:06 a.m. Second by Member Orth. All Members present voted aye and the motion was declared carried.



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): Julie Saatoff	Name (printed): _____
Address: 97 23rd Ave. N Fargo, ND 58102	Address: _____
Primary Phone: _____	Primary Phone: _____
Alternative Phone: _____	Alternative Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Location of property requesting a variance:
Address: 97 23rd Ave. N Fargo, ND 58102
Zoning District: _____
Legal Description: Lot 6 Block 3 of North Park Add.

Proposed Variance Information:

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

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).

SR 2 is 30' Variance for 8' Setback 22'

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 have a deck out my front door which i am unable to use due to the fact it faces the south and can get well over 100 degrees. One can not touch my door to go inside without burning themselves. I am a disabled Veteran with PTSD part of which was military sexual trauma. I have a fear of spending time in my back yard. I am on constant alert and I am not comfortable back there.. I've used tents and such but our high winds have destroyed all of them.

My daughter has terminal cancer and is at the end stages of her life so she is going to come spend it at my house. She can not be in direct sunlight and loves to be outside so I hired someone to put up a pergola, a roof over my deck which is already there, only to find out I can't. she is in a wheelchair so the only way in and out is the front door.



Planning & Development
 225 4th Street North
 Fargo, ND 58102
 Office: 701.241.1474 | Fax: 701.241.1526
 Email: Planning@FargoND.gov
 www.FargoND.gov

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): Julie Saatoff Date: 4-17-24
 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;

see description on page 2

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

It's my property & shouldn't compromise any neighbors vision or outlook on their property

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;

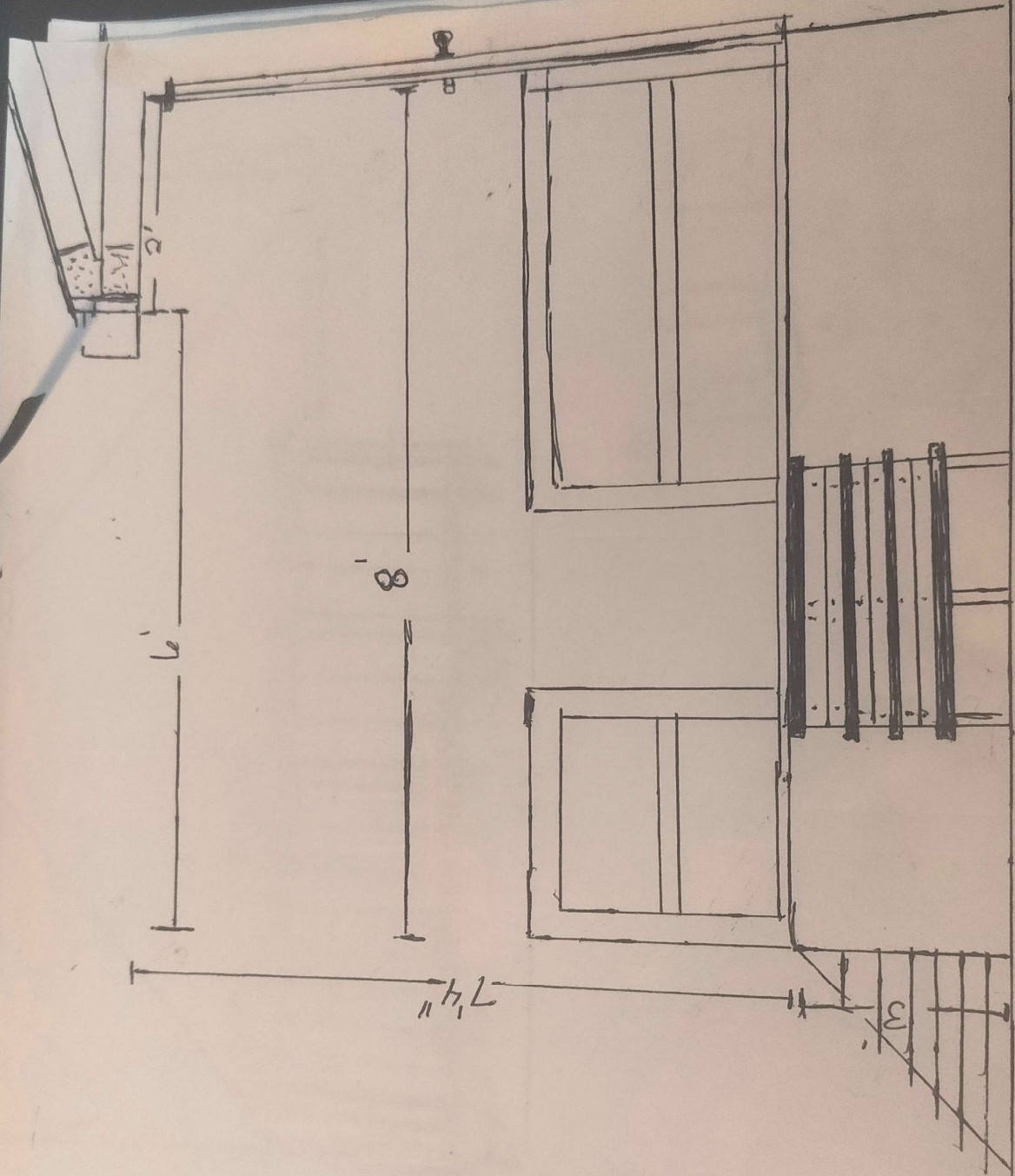
It can't go out back due to the way the structure is built. to go out back you have to go down steps into the garage, through garage to get out front or back. Easy access to deck with wheelchair

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

no it would not affect any above.

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

being efficient on materials. Door & Windows swing out to deck. Daughters will need ability to turn & maneuver around to get in & out



STAIRS

6'

8'

7'4"

2'

3'

PREMIUM OUTDOOR PRODUCTS



12 x 6 ALL-CEDAR
**GRILL
GAZEBO XL**

Enough Space for 2 Full-Size Grills, Griddle, or

lights shown not included





**Beauty
& Function**

VA



U.S. Department of Veterans Affairs

Veterans Health Administration
Midwest Health Care Network

Fargo VA Health Care System (VISN 23)
2101 Elm Street N
Fargo, ND 58102

April 18, 2024

RE: Ms. Julie Saatoff
97 23 Ave N
Fargo ND 58102

TO WHOM IT MAY CONCERN:

Ms. Julie Saatoff has been in supportive therapy with me since May 2022. She is a service-connected Veteran dealing with complications related to her Post Traumatic Stress Disorder and Military Sexual Trauma.

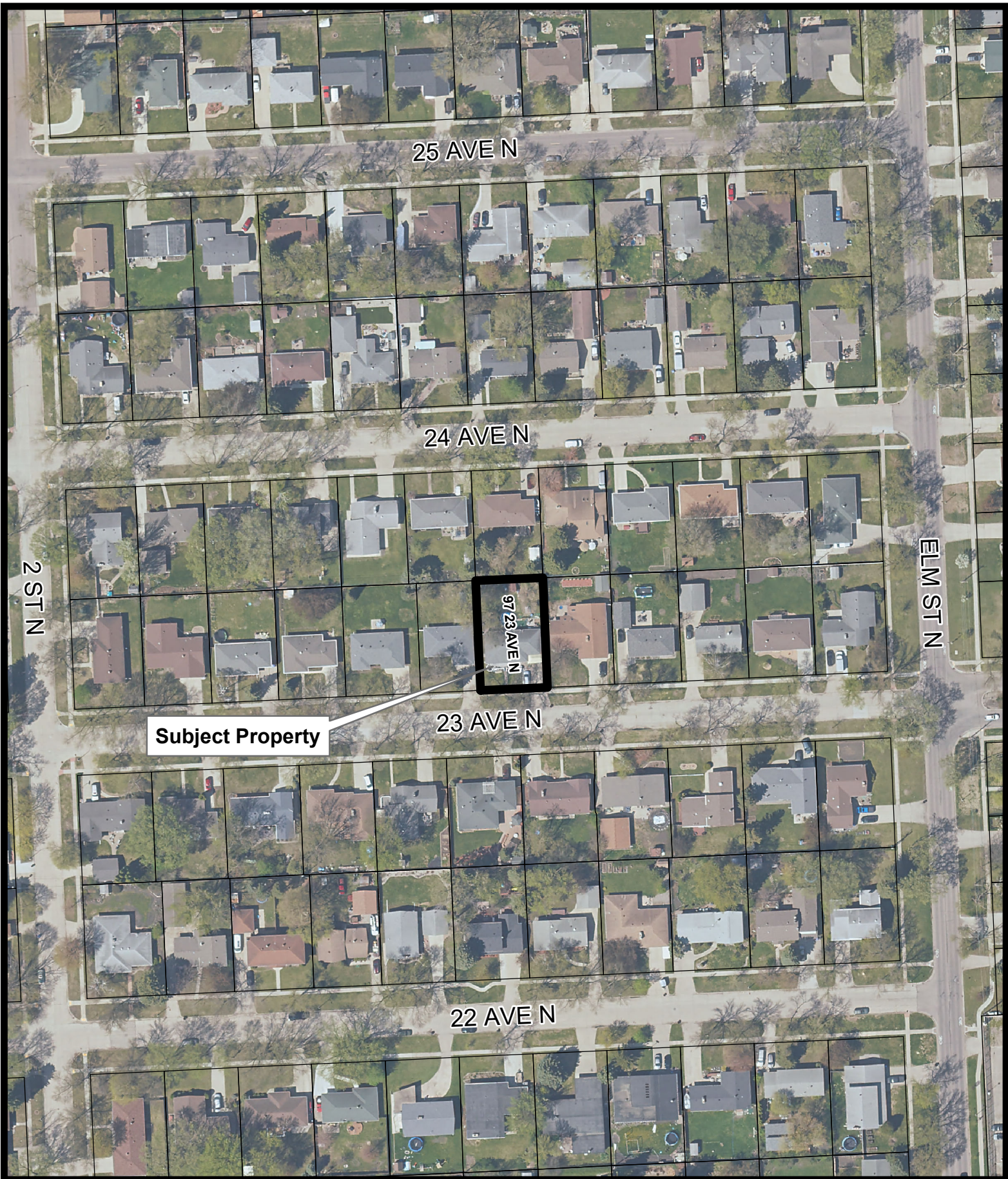
She would very much benefit from having a pergola placed on her deck. She spends a great deal of time in her home and yard. This pergola would enable her and her daughter, who is wheel chair bound, with terminal cancer, to have an enhanced sense of privacy and security. We are requesting you give special consideration to allowing a variance in this unique situation.

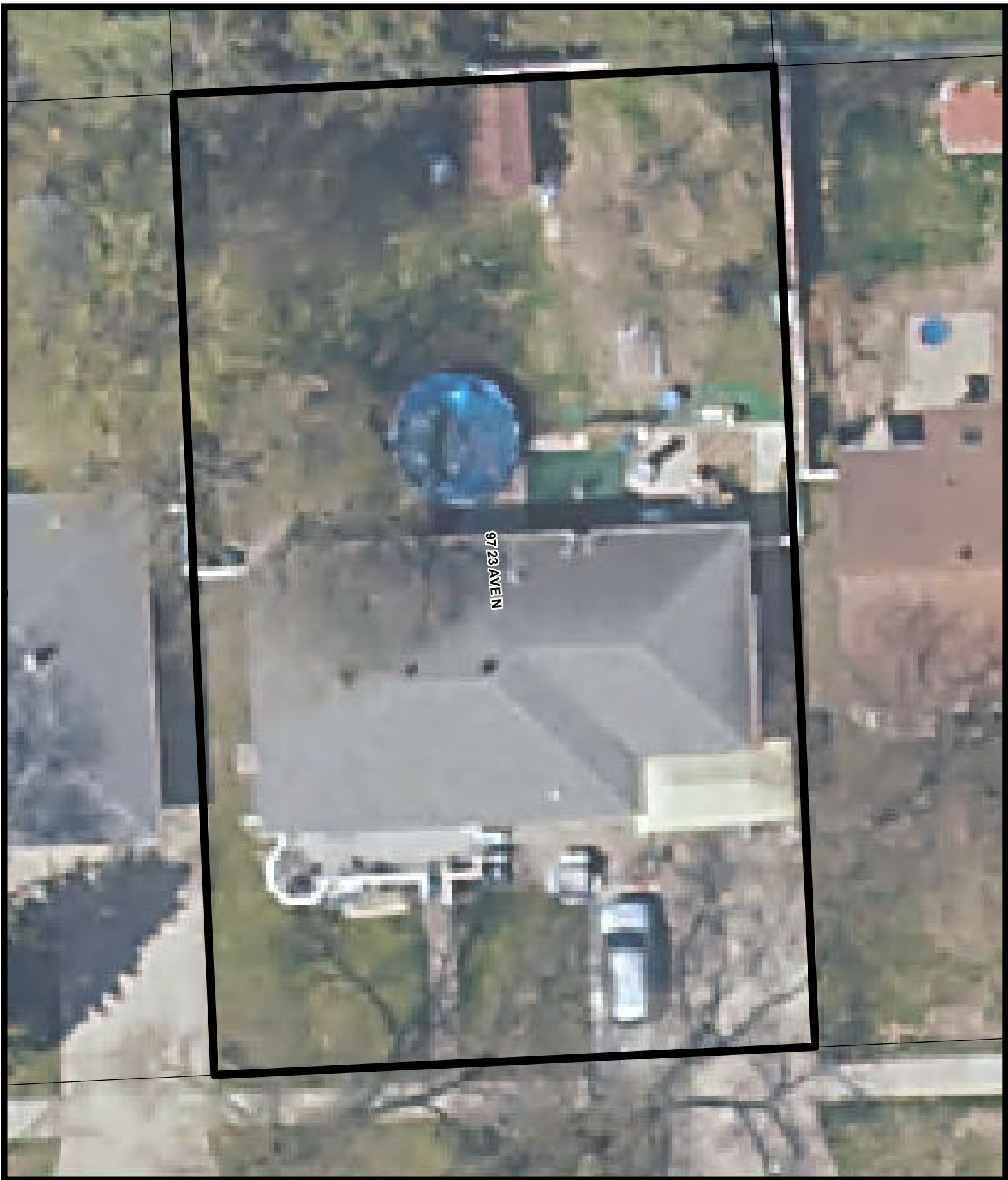
Ms. Saatoff has given permission for this request including release her personal information. Please reach back to me if you need additional information. Thanking you in advance.

Sincerely,

A handwritten signature in black ink that reads "Ann Adams-Hove".

Ann Adams-Hove, LCSW
Grief and Loss Counseling
Fargo VA Health Care System
2101 Elm Street North
Fargo ND 58102
701-239-3700 Ext 4166
Jacqueline.adams-hove@va.gov





97 23 AVEN N



CITY OF FARGO

Board of Adjustment

Variance Staff Report

Item No: 2.a	Date: May 22, 2024
Address: 97 23 Ave N	
Legal Description: Lot 6, Block 3, North Park Addition	
Owner(s)/Applicants: Julie Saatoff	
Reason For Request: To allow an overhead structure to encroach in the required Front Setback	
Zoning District: SR-2, Single Dwelling Residential	
Status: Board of Adjustment Public Hearing: May 28, 2024	

SR-2 Accessory Structure Standards	Proposed Pergola / Cover
Front Setback: 30 feet	Proposed Front Setback: 24 feet

Background:

The applicant proposes to construct an overhead structure (pergola or gazebo) on the subject property within the SR-2 (Single-Dwelling Residential) zoning district. Section 20-0501 of the Land Development Code outlines the Front Setback in the SR-2 zoning district as 30 feet. The applicant is requesting a variance in order to allow an overhead structure (pergola) to provide permanent shade over an existing deck.

20-0501 Residential District Standards:

Dimensional Standard	Zoning District										
	AG	SR-0	SR-1	SR-2	SR-3	SR-4	SR-5 ^[9]	MR-1	MR-2	MR-3	UMU
Maximum/Minimum Density (UPA - Units per Acre)	0.1 Max.	1.0 Max.	2.9 Max.	5.4 Max.	8.7 Max.	12.1 Max.	14.5 Max.	16.0 Max.	20.0 Max.	24.0 ^[1] Max.	18.0 Min.
Minimum Lot Size											
Area (Sq. Ft.)	10 Ac	1 Ac ^[2]	15,000	8,000	5,000	3,600	3,000	5,000	5,000	5,000	2,420
Width (Ft.)	200	120	80	60	50 ^[3]	34 ^[3]	25	50 ^[3]	50 ^[3]	50 ^[3]	50 ^[3]
Minimum Setbacks(Ft.)											
Front	50 ^[4]	50	35	30	20	15 ^[5]	15 ^[5]	25	25	25	10
Interior Side ^[6]	25	25	15%/15	10%/5	10%/5	4	4	15%/25	15%/25	10	5
Street Side	25 ^[7]	25	17.5	15	12.5	10	10	12.5	12.5	12.5	10
Rear	50	50	25	25	15	15	15	20	20	20	15

Section 20-0504(D) *Measurement and Guidance* provides further guidance on these requirements including exceptions that are considered when applying setback regulations:

Setbacks refer to 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, except as modified by the standards of this section. Setbacks must be unobstructed from the ground to the sky except as specified in this section.

- 1f. *Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to 10 feet into any required front, rear or street side setback and up to 3 feet into any required interior side setback.*

The applicant's proposed overhead structure encroaches into the required Front Setback in the SR-2, Single Dwelling zoning district.

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;**
Staff finds that the requested variance arises from proposed conditions that are self-imposed by the applicant, and 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. As of the writing of the staff report, 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;**
Staff finds that strict application of the applicable standards will not constitute an unnecessary physical hardship because the property can be used for single-dwelling household living. Additionally, staff suggests that there are alternative options available for an overhead structure (pergola or gazebo) that would not require the granting of a variance. **(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 because the accessory structure is not required for the use and enjoyment of the property for residential household living. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicant to construct the overhead structure proposed. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow an overhead structure (pergola or gazebo) encroach in the required Front Setback 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."