THE CITY OF Fargo FAR MORE

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

MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planning Coordinator
DATE: July 20, 2021
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, July 27, 2021 at 9:00 a.m. in the City Commission Chambers at Fargo City Hall. 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, July 27, 2021 9:00 a.m.
Commission Chambers
AGENDA

1. Approve Minutes of March 23, 2021 Meeting

2. New Business
   a) Appeal of Administrative Decision
      Appellant claims staff err in its determination that Sign Permit No. SG20080664, dated November 28, 2008, is expired and that the proposed sign can no longer be constructed under the terms of that sign permit.

3. Other Business
   a) Board Membership Update (*Informational Item*)
   b) Annual Nomination and Election of Officers
      -Chairperson
      -Vice-Chairperson

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.

EQUAL HOUSING OPPORTUNITY

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, March 23, 2021**

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, March 23, 2021.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Jared Heller, Michael Love, Mike Mitchell

Absent: Matthew Boreen

Chair Love called the meeting to order.

Item 1: Approval of Minutes: Regular Meeting of November 24, 2020

Member Wendel-Daub moved the minutes of the November 24, 2020 Board of Adjustment meeting be approved. Second by Member Heller. All Members present voted aye and the motion was declared carried.

Item 2: New Business

a) Variance Request – 2805 64th Avenue South: APPROVED

Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow a detached garage to exceed the maximum height for accessory structures in the SR-2, Single-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 the review criteria (a) and (c) have not been met.

Applicant Chris Schuler, Century Builders, spoke on behalf of the application.

Discussion was held on the proposed height of the garage in relation to the existing home, the evaluation criteria, and the surrounding properties.

Member Wendel-Daub moved to approve the variance to allow the proposed detached garage to exceed the maximum height allowed in the SR-2, Single-Dwelling Residential zoning district. Second by Member Mitchell.

Discussion was held concerning added height limitations to the motion.

Member Wendel-Daub amended her motion and moved to approve the variance to allow the accessory building height to be 18 feet 8 inches for the proposed attached garage to exceed the maximum height in the SR-2, Single-Dwelling Residential zoning district. Second by Member Heller.

Staff clarified the proposed garage is detached, not attached.

Members Wendel-Daub and Heller withdrew their motions.

Member Wendel-Daub moved to approve the variance to allow the proposed detached garage to exceed the maximum height allowed and the accessory building height to be approved at 18 feet 8 inches in the SR-2, Single-Dwelling Residential zoning district. Second by Member Heller. Upon call of the roll Members Wendel-Daub, Heller, Mitchell, 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 Heller moved to adjourn the meeting at 9:24 a.m. Second by Member Mitchell. All Members present voted aye and the motion was declared carried.

CITY OF FARGO
Board of Adjustment
Appeal of an Administrative Decision Staff Report

Item No: 2.a	**Date:** July 20, 2021
Appellant: Josh Gilleland, iDigital Outdoor	
Status: Board of Adjustment – July 27, 2021	

Summary of Record

Background:
A sign permit was issued on November 28, 2008 for the construction of a 672 square-foot, static, off-premise billboard, for property owned by Currier Company, located at 3980 Highway 81 N in Fargo (the subject property). The concrete foundation for the proposed billboard was installed prior to the end of 2008, after which, no further construction or improvements were made. No sign has ever been constructed on this foundation.

Three years later, in November 2011, the City of Fargo adopted a new sign code. The new sign code restricts billboard signs to a maximum size of 300 square feet at the subject property.

In 2012, ownership of the subject property was conveyed to 6037 Williston, LLC.

In March of 2021, the City of Fargo Inspections Department was contacted by Josh Gilleland of iDigital Outdoor (appellant) on behalf of the property owner, who inquired about constructing a billboard on the existing concrete footing in accordance with the sign permit issued in 2008. City staff determined that the 2008 sign permit was expired, and that any proposed sign construction would require a new sign permit and would need to comply with the current sign code, which would restrict an off-premise billboard to a maximum size of 300 square feet.

Shortly thereafter, an Appeal of Administrative Decision was filed by the appellant, who believes the sign permit issued in 2008 is still valid. The appellant argues that the construction of the sign foundation in 2008 "grandfathers" the construction of the billboard in accordance with the previous sign code that was in effect prior to the adoption of the current sign code.

Question Before the Board:
Did staff err in its determination that Sign Permit No. SG20080664, dated November 28, 2008, is expired and that the proposed sign can no longer be constructed under the terms of that sign permit?

Exhibits:
The following exhibits are admitted as part of this staff report and are attached:

- Exhibit 1 – Sign Permit Application
- Exhibit 2 – Sign Permit
- Exhibit 3 – Zoning Map & Aerial Photo for the area of 3980 US Highway 81 N
- Exhibit 4 – Parcel Report for the property at 3980 US Highway 81 N
- Exhibit 5 – Appeal materials from the appellant.

Relevant Facts

Staff believes that the following facts are relevant to the Board's consideration of this appeal:

1. The subject property is located at 3980 US Highway 81 N, Fargo, ND.
2. The sign permit in question (Sign Permit No. SG20080664) is dated November 28, 2008.
3. The proposed billboard sign was never constructed at the subject property.
4. The owner listed on the sign permit application and the sign permit is "Currier Company."
5. The current owner of the subject property is "6037 Williston LLC."

Relevant Code Provisions

Land Development Code Section 20-0916.G – Review and Action of Appeals by the Board of Adjustment

> *Appeals of Administrative Decisions shall be taken to the Board of Adjustment. The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence. A concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official.*

Land Development Code (Sign Code) Section 20-1303.B – Conformity With Sign Code Required

> *No person shall display, construct, erect, alter, use, or maintain any sign except in conformance with the provisions of this article, the sign code. No person shall display, alter, use, maintain, or enlarge any legal, nonconforming sign except in conformity with the provisions of this article, the sign code. No person shall perform or order the performance of any act contrary to the provisions of this ordinance or fail to perform any act required by the provisions of this article, the sign code.*

Land Development Code (Sign Code) Section 20-1303.F – Action on Application.

> *The Building Official shall examine or cause to be examined applications for permits and amendments therewith within a reasonable time after filing. If the application does not conform to the requirements of pertinent laws, the Building Official shall reject such application in writing, stating the reasons therefore. If the Building Official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the Building Official shall issue a permit therefore as soon as practicable. In the event the Building Official has neither issued nor denied a complete application within 30 days of the submission of a complete application, the application shall be deemed approved and the proposed work or sign deemed permitted; provided, however, that nothing in this section shall be construed to allow a sign or supporting sign structure to not conform to the International Building Code, Chapter 21, or the Electrical Code, Chapter 23, of the Fargo Municipal Code.*

Land Development Code (Sign Code) 20-1303.J – Design and Construction

> *All signs must comply with applicable provisions of the International Building Code and the Electrical Code, Fargo Municipal Code Article 21-01 and Chapter 23, respectively.*

International Building Code Section 105.5 – Expiration

> *Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building*

official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Staff Analysis

Staff has determined that Sign Permit No. SG20080664, dated November 28, 2008, is expired and that the proposed sign can no longer be constructed under the terms of that sign permit. This determination is based on the fact that the permit is expired and the fact that the property is under new ownership.

Sign permits are not valid in perpetuity. Sign permits, like all building permits, are only valid for the period of time prescribed by law. Section 105.5 of the International Building Code states that, "*Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.*" The appellant claims that the Building Code does not apply to signs, which are governed by the Sign Code. This is not true. As stated within Section 20-1303.J of the Sign Code, "*All signs must comply with applicable provisions of the International Building Code and the Electrical Code, Fargo Municipal Code Article 21-01 and Chapter 23, respectively.*" This includes the 180-day permit expiration provision of the International Building Code. According to the appellant, a foundation was poured and completed prior to 2009. No sign was ever constructed on the foundation and work authorized on the site by the permit was abandoned for a period of 12 years, which is well over 180 days. The City of Fargo received no requests for extension of this permit.

Additionally, the sign permit in question was issued for work on the subject property, which was owned by *Currier Company,* as noted on the sign permit application and the sign permit. Currier Company is no longer the legal ownership entity of the property—the property is currently owned by 6037 Williston LLC. When there is a change in ownership after the issuance of a building permit, the new owner must apply for a new permit if they wish to complete the work covered by the permit granted to the previous owner. Staff was never contacted regarding this change in ownership relative to the sign permit.

In summary, the Sign Code explicitly states that all signs must comply with applicable provisions of the International Building Code. The International Building Code contains provisions for the granting of permits, including the expiration of such permits. A sign permit is a building permit like any other, and subject to the same 180-day expiration standards. To say otherwise is to say that that sign permits are valid in perpetuity (regardless of changes to development regulations), which would be inconsistent with the City's development regulations as well as the intent of the Sign Code.

Staff Recommendation

Staff recommends that the Board of Adjustment affirm staff's decision that Sign Permit No. SG20080664, dated November 28, 2008, is expired and that the proposed sign can no longer be constructed under the terms of that sign permit.

EXHIBIT 1

CITY OF Fargo
Planning & Development

2006 Application Form

Permanent Sign Application

200 3rd Street North
Fargo, ND 58102
Phone: 701-241-1561
Fax: 701-476-6779

Applicant Information

Permit No.: _____

Property Address of Sign: Old Highway 81 & 40th Avenue North, Fargo, ND 58102

Owner(s) of Property:

Name(s):	Address(es):	Telephone:
Currier Company	1110 25th Avenue North, Fargo, ND	701-237-6181

Tenant/Occupant of Building

Name of Business: N/A Contact: _____

Address: Old Highway 81 & 40th Ave. N, Fargo, ND Telephone: 701-237-6181 Fax: 701-293-7811

Sign Company:

Name of Business: Dakota Fence Contact: David L. Currier

Address: 1110 25th Avenue North, Fargo, ND Telephone: 701-237-6181 Fax: 701-293-7811

State Contractors License #: 1870 Class A

Type of Work [X]-New Sign []-Relocation []-Renovation []-Replacement

Type of Sign (Check All That Apply) []-ON-PREMISE [X]-OFF-PREMISE []-Fin [X]-Pole []-Ground []-Roof* []-Wall []-Projecting []-Combination [X]-Electric []-Illuminated

*Designed by a registered professional engineer and Board of Adjustment approval required.

Sign Description

How many faces will the Sign have? 2

Horizontal length of Sign: 48' Vertical Length of Sign: 14'

Thickness of Sign: _____ Copy Area: _____

Single Sign Face Area: _____ Sign Clearance from Grade: 21'

Top of Sign Height from Grade: 35' from Roof: N/A

from Roof: N/A

Will the Sign project beyond property line? []-Yes [X]-No If Yes, how far? _____

Attachments

Please ensure the following has been completed:

1. [X] Completed Sign Permit Application
2. [X] Existing Sign Survey (Form Attached)
3. [X] Site Plan Drawn to Scale (2 copies showing building frontage, curb lines, property lines, and location of sign on property)
4. [X] Sign Diagram Plan (2 copies showing dimensions of all proposed signs and cabinet)
5. [X] Engineering Drawings and Schedules, if required
6. [X] Sign Permit Fee

Declaration of Applicant/Agent

THE ISSUANCE OF A PERMIT SHALL NOT BE CONSTRUED TO BE A PERMIT FOR, NOR AN APPROVAL OF, ANY VIOLATION OF ANY ORDINANCE ADOPTED BY THE CITY OF FARGO. I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND STATE THAT THE ABOVE IS CORRECT AND AGREE NOT TO START THIS PROJECT UNTIL THIS APPLICATION IS APPROVED, AND SHALL COMPLY WITH THE LAWS OF THE STATE OF NORTH DAKOTA AND THE SIGN CODE REGULATIONS, LAND DEVELOPMENT CODES AND THE BUILDING CODE AS ADOPTED BY THE CITY OF FARGO. ANY VIOLATION OF THE ABOVE NOTED TERMS WILL CAUSE IMMEDIATE REVOCATION OF THIS PERMIT.

David L. Currier 10-01-2008

APPLICANT SIGNATURE DATE

For permanent sign dimensional standard requirements please see the City of Fargo Sign Code at
http://www.cityoffargo.com/Inspections/Signcode.doc

EXHIBIT 2

CITY OF FARGO

FARGO, NORTH DAKOTA

SIGN PERMIT

Date 11/28/2008
Permit No. SG20080664
Investigative Fee $0.00
Permit Fee $201.60
Total Fee $201.60
Vendor: 1319

Contractor DAKOTA FENCE
Owner CURRIER COMPANY
Permit Address 3980 US HWY 81 N

Legal Description Addition 5540

LOT 1 & PT OF NE 1/4 SEC 22, TWP 140N, RGE 49W, DESC AS FOLL: A PARCEL OF LD IN NE 1/4 OF SEC 22, TWP 140N, RGE 49W, DESC AS FOLL: A TRACT OF LD 82.5 FT IN WIDTH LYING WLY OF 1, OF SD SEC 22, TWP 140N, OF RGE 49W, MEAS AT RIGHT ANGLES FROM WLY LN OF 1, & BOUNDED ON S BY R/W LN OF HWY 81 & BOUNDED ON N BY R/W LN OF CASS CTY HWY 20 (FOREGOING DESC PROP IS A RECT PARCEL OF LD 82.5 FT WIDE & 724.9 FT LONG ON ITS ELY BOUND WITH 1 & SLIGHTLY LONGER ON ITS WLY BOUND) BLK 1 ADDN# 5540 (Curriers 2nd Subd) ADDITIONAL INFO: *06/29/99 LEGAL DESC CORR

WORK DESCRIPTION

Install off premise signage as per approved plans on file

Material

Sign Type	Width	Height	Overall Height	Flat	Projection	Free Standing	Single Face	Double Face	Sign Size	Material
Permanent	48	14	35	yes	no	yes	no	yes	672	steel/pvc

INSPECTOR

PURCHASER

11/28/08

EXHIBIT 3

THE CITY OF Fargo FAR MORE

Zoning Districts

AG	LC	MHP	SR-1
DMU	LI	NCI	SR-2
GC	MR-1	NO	SR-3
GI	MR-2	P/I	SR-4
GO	MR-3	UMU	SR-5

3980 Highway 81 North

0 250 500 Feet

N

EXHIBIT 4

Parcel Information Report
Parcel Number: 01-8453-00100-000

General Information

Segment Id:	1
Owner 1:	6037 WILLISTON LLC
Owner 2:	
Property Address:	3980 US HWY 81 N
Mailing Address:	1110 25 AVE N FARGO, ND 58102
Addition Name:	Curriers 3rd
Block:	1
Lot:	1

Additional Description:

*06/29/99 LEGAL DESC CORR *2/16/11 #11-032 PLATTED FROM PT NE 1/4 SEC 22 TWP 140N RGE 49W & A REPLAT OF LT 1, BLK 1, CURRIERS 2ND ADDN (2/14/11, B:X-1, P 111, DOC #1317578) SPL/FR 01-5540-00150-000

Estimated Flood Stage Levels For River Flooding:
If your property is outside the city limits or your property and structure are not affected by a 25 to 44 foot flood stage data will be not available (N/A).

Property may be affected by an approximate flood stage of 36 or higher.
Structure may be affected by an approximate flood stage of N/A or higher.

Please note that this approximation does not take into account any local issues such as ice and debris jams or localized flooding from intense rainfall events.

District Information

Cass School District:	6
Elem. School District:	Eastwood

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	$253,000.00	$0.00	$253,000.00

Building Information

Year Built:	0	No. of Apartment Units:	
Total Building SqFt:	N/A	Residential Story Height:	()

Lot Size

Front Width:	1215.65	Land Use:	C (Commercial)
Back Width:	1258.30	Property Type:	92 (Vacant Land)
Depth Side 1:	566.68		
Depth Side 2:	0.00	Square Footage:	320819.14

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

Zoning

Zone 1:	LI
Zone 2:	
Conditional Use Permit:	
Planned Unit Devel #:	
Planned Unit Devel Date:	
Conditional Overlay Number:	
Conditional Overlay Date:	

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EXHIBIT 5

THE CITY OF Fargo FAR MORE

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

APPEAL OF AN ADMINISTRATIVE DECISION

We, the undersigned, do hereby submit an application to the Board of Adjustment of the City of Fargo, North Dakota, to hear and decide an appeal of a decision made by an administrative official of the City of Fargo.

Property Owner Information

Name (*printed*): 6037 Williston LLC

Address: 1110 25 Ave N, Fargo, ND 58102

Primary Phone: 701-792-7175

Alternative Phone:

Fax:

Email: dave@dakotafence.com

Representation Information *(if applicable)*

Name (*printed*): Josh Gilleland

Address: 4302 13th Ave So, Ste 4-375, Fargo, ND

Company iDigital Outdoor

Primary Phone: 701-261-3366

Alternative Phone: 701-369-6100

Fax: 701-212-4714

Email: josh@idigitaloutdoor.com

☐ Same as property owner

Location of property involved in the appealed decision *(if applicable)*

Address: 3980 US HWY 81 N, Fargo, ND 58102

Legal Description (*attach separate sheet if more space is needed*): *06/29/99 LEGAL DESC CORR *2/16/11 #11-032 PLATTED FROM PT NE 1/4 SEC 22 TWP 140N RGE 49W & A REPLAT OF LT 1, BLK 1, CURRIERS 2ND ADDN (2/14/11, B:X-1, P 111, DOC #1317578) SPL/FR 01-5540-00150-000

Item for Appeal *(attach separate sheet if more space is needed)*

Existing permit that was filed for in October of 2008 has been deemed expired by the Fargo Inspections Department on 05/03/2021

Reason for Appeal *(attach separate sheet if more space is needed)*

This permit was applied for in October 2008, issued on November 28, 2008. At the time, a sign code change was being debated and a moratorium was rumored to be eminent. The landowner was concerned about the moratorium and inquired with the inspections department what needed to be done to solidify the permit for this location. Attached hereto is a notarized affidavit from the owner and permit applicant, Dave Currier, stating he was told that if the foundation was completed, this action would solidify the permit. The affidavit represents Mr. Curriers legal testimony and recollection of the information relayed to him by the inspections department which was done so over telephone. The Curriers are well respected members of the community and had a substantial investment in this permit; there is no reason to think Mr. Currier is not relaying the information as it was presented to him by staff of the inspections department.

THE CITY OF Fargo FAR MORE

Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.

Owner (*Signature*): David L. Amundson Date: 6-2-21

Representative (*Signature*): Josh Gilleland Date: 06/02/2021

Office Use Only

Date Filed: _____ Pre-Application Meeting Date: _____

Application Complete: ☐ Yes ☐ No Reviewed By: _____

GENERAL AFFIDAVIT

The within named person (Affiant), Dave Currier, who is a resident of Cass County, State of North Dakota, personally came and appeared before me, the undersigned Notary Public, and makes this his/her statement, testimony and General Affidavit under oath or affirmation, in good faith, and under penalty of perjury, of sincere belief and personal knowledge that the following matters, facts, and things set forth are true and correct, to the best of his/her knowledge:

To whom it may concern:

My name is David L Currier with Currier Company. I requested a sign permit dated 11-28-2008 (permit #SG20080664 which was issued and paid for). During the sign application process, I had a telephone conversation with the city of Fargo inspection dept. personal responsible for billboard signage that if we installed the sign footing prior to 12-31-2008 that would solidify the installation and could erect the 14'high x 35' wide sign post/sign when we wanted. I did supply all certified engineered drawings with the application of what we were going to install. The sign footing installation was completed prior to 12-31-2008 complying with all the codes for signage in 2008. I feel I have met all requirements and should be able to install the post and sign as originally planned at this time. I have $15,000 to $20,000 dollars in the sign engineering and foundation installation. I was never told by any city inspection official that the sign permit would expire. To the contrary I was told we could erect the post and sign when we wanted. My sign application should be grandfathered in as we did all required and were told the sign could be installed at our discretion. I have attached a copy of the sign application and permit issued. I am requesting to install the sign as agreed upon by the City of Fargo 11-28-2008.
Thank you,

David L Currier

Dated this 2 day of June, 2021,

David L. Currier
Signature of Affiant

==========

State of ND

County of Cass

Subscribed and sworn to, or affirmed, before me on this 2 day of June, 2021 by Affiant David Currier.

Margaret K Footitt
Signature of Notary Public

2.13.2024
My Commission Expires:

MARGARET K. FOOTITT
Notary Public
State of North Dakota
My Commission Expires Feb. 13, 2024

CITY OF Fargo
Planning & Development

2006 Application Form

Permanent Sign Application

200 3rd Street North
Fargo, ND 58102
Phone: 701-241-1561
Fax: 701-476-6779

Applicant Information

Permit No.: _____

Property Address of Sign: Old Highway 81 & 40th Avenue North, Fargo, ND 58102

Owner(s) of Property:

Name(s):	Address(es):	Telephone:
Currier Company	1110 25th Avenue North, Fargo, ND	701-237-6181

Tenant/Occupant of Building

Name of Business: N/A Contact: _____

Address: Old Highway 81 & 40th Ave. N, Fargo, ND Telephone: 701-237-6181 Fax: 701-293-7811

Sign Company:

Name of Business: Dakota Fence Contact: David L. Currier

Address: 1110 25th Avenue North, Fargo, ND Telephone: 701-237-6181 Fax: 701-293-7811

State Contractors License #: 1870 Class A

Type of Work [X]-New Sign []-Relocation []-Renovation []-Replacement

Type of Sign (Check All That Apply) []-ON-PREMISE [X]-OFF-PREMISE []-Fin [X]-Pole []-Ground []-Roof* []-Wall []-Projecting []-Combination [X]-Electric []-Illuminated

*Designed by a registered professional engineer and Board of Adjustment approval required.

Sign Description

How many faces will the Sign have? 2

Horizontal length of Sign: 48' Vertical Length of Sign: 14'

Thickness of Sign: _____ Copy Area: _____

Single Sign Face Area: _____ Sign Clearance from Grade: 21'

Top of Sign Height from Grade: 35' from Roof: N/A

from Roof: N/A

Will the Sign project beyond property line? []-Yes [X]-No If Yes, how far? _____

Attachments

Please ensure the following has been completed:

1. [X] Completed Sign Permit Application
2. [X] Existing Sign Survey (Form Attached)
3. [X] Site Plan Drawn to Scale (2 copies showing building frontage, curb lines, property lines, and location of sign on property)
4. [X] Sign Diagram Plan (2 copies showing dimensions of all proposed signs and cabinet)
5. [X] Engineering Drawings and Schedules, if required
6. [X] Sign Permit Fee

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David L. Currier 10-01-2008

APPLICANT SIGNATURE DATE

For permanent sign dimensional standard requirements please see the City of Fargo Sign Code at
http://www.cityoffargo.com/Inspections/Signcode.doc

CITY OF FARGO

FARGO, NORTH DAKOTA

SIGN PERMIT

Date 11/28/2008
Permit No. SG20080664
Investigative Fee $0.00
Permit Fee $201.60
Total Fee $201.60
Vendor: 1319

Contractor **DAKOTA FENCE**
Owner CURRIER COMPANY
Permit Address **3980 US HWY 81 N**

Legal Description Addition 5540

LOT 1 & PT OF NE 1/4 SEC 22, TWP 140N, RGE 49W, DESC AS FOLL: A PARCEL OF LD IN NE 1/4 OF SEC 22, TWP 140N, RGE 49W, DESC AS FOLL: A TRACT OF LD 82.5 FT IN WIDTH LYING WLY OF 1, OF SD SEC 22, TWP 140N, OF RGE 49W, MEAS AT RIGHT ANGLES FROM WLY LN OF 1, & BOUNDED ON S BY R/W LN OF HWY 81 & BOUNDED ON N BY R/W LN OF CASS CTY HWY 20 (FOREGOING DESC PROP IS A RECT PARCEL OF LD 82.5 FT WIDE & 724.9 FT LONG ON ITS ELY BOUND WITH 1 & SLIGHTLY LONGER ON ITS WLY BOUND) BLK 1 ADDN# 5540 (Curriers 2nd Subd) ADDITIONAL INFO: *06/29/99 LEGAL DESC CORR

WORK DESCRIPTION

Install off premise signage as per approved plans on file

Material

Sign Type	Width	Height	Overall Height	Flat	Projection	Free Standing	Single Face	Double Face	Sign Size	Material
Permanent	48	14	35	yes	no	yes	no	yes	672	steel/pvc

INSPECTOR 11/28/08

PURCHASER

Josh Gilleland
iDigital Outdoor
4302 13th Ave So, Ste 4375
Fargo, ND 58103

RE: Billboard Permit - Appeal of Administrative Decision

Dear Board Members,

Thank you for taking the time to review this case. The initial arguments in our application outlined that the landowner applied for a billboard permit with the intentions of having a permanent permit in light of the impending sign code changes and moratorium on new billboard permits at the time of the application. The landowner inquired with the inspections department as to what he needed to do to ensure that permit was good forever in a grandfathered state. He abided by those instructions, paid for engineered drawings and installed an extensive footing that likely cost him nearly $20,000 (Exhibit 1). The landowner also owns a steel fabrication company, so it would have been a very easy and relatively inexpensive option for him to put up the pole. What we are arguing, is that he followed instructions, did what he thought (or so he was told) he needed to do to ensure the validity of that permit.

This brings me to another point that dawned on me during my research for this appeal. As an employee of iDigital Outdoor, we have permitted many different signs. Schedules are always running behind for contractors, we are up against the weather; there are additional details that get addressed by landowners, or issues with placement on their property. There are many different things that delay our company in putting up a billboard, so we often inquire with inspections, how long do we have to put up the sign before the permit expires? And we are given verbal guidance that "as long as the work has been started, you are good." There are times, the work has not started for a period of time and the 180 day window approaches, so we ask for an extension and have been granted that extension. We ourselves have not run into a situation where the construction began, but was pending completion for a long period of time, so this is new territory for us to explore.

Further, in the research I have done, I was not able to locate any references to the suspension, expiration, termination, revocation, or abandonment of a permit, other than in (Exhibit 2) Article §20-1103 Remedies and Enforcement Powers, subsection A & B that gives the Building Official the right to withhold a permit or revoke a permit. I made a few calls and I am of the understanding that the City Sign Code does not address the suspension, expiration, termination, revocation, or abandonment of a permit, but rather the Inspections Department uses the Residential International Building Code (Exhibit-3) as a guideline to govern the expiration of a permit. In Chapter 1, section 105.5 – Expiration, its states "Every permit issued shall become invalid unless the work on the site authorized by such permit is commended within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated."

After pondering those words, it became clear to me and this is the primary argument of my appeal, that a building permit is not the same as a billboard permit. A building permit is a temporary

permit that allows for the construction of said project, whether a home or general use building, until such time as the project has been completed and inspections have been concluded satisfactorily. That permit then goes away; it does not need to remain with the home in order for the home to remain standing and in place. The home's existence is not subject to the permit remaining in permanence and once that permit expires naturally or in other words is completed, the home is allowed to remain free from permit suspension, expiration, termination, revocation, or abandonment.

Not so with a billboard permit, it must remain with the sign in perpetuity for as long as that sign remains erect. It does not disappear once the construction is complete, it remains. As I have done many times before, you can request a copy of any billboard permit within the city limits, that permit is kept as the permanent record of that sign and outlines the specifications of what sign is allowed to be. For painting, maintenance and changes to the sign that do not affect the parameters by which it was originally permitted, there is no requirement for additional permits, further showing precedence that the permit never truly expires or terminates. So the argument is that a billboard permit is fundamentally different from a traditional building permit, it does not expire or terminate naturally like the building permits references in the International Building Code, but rather should be revoked or suspended by the Building Official if the intention was to not allow the permit holder carry that permit in perpetuity.

After Action:

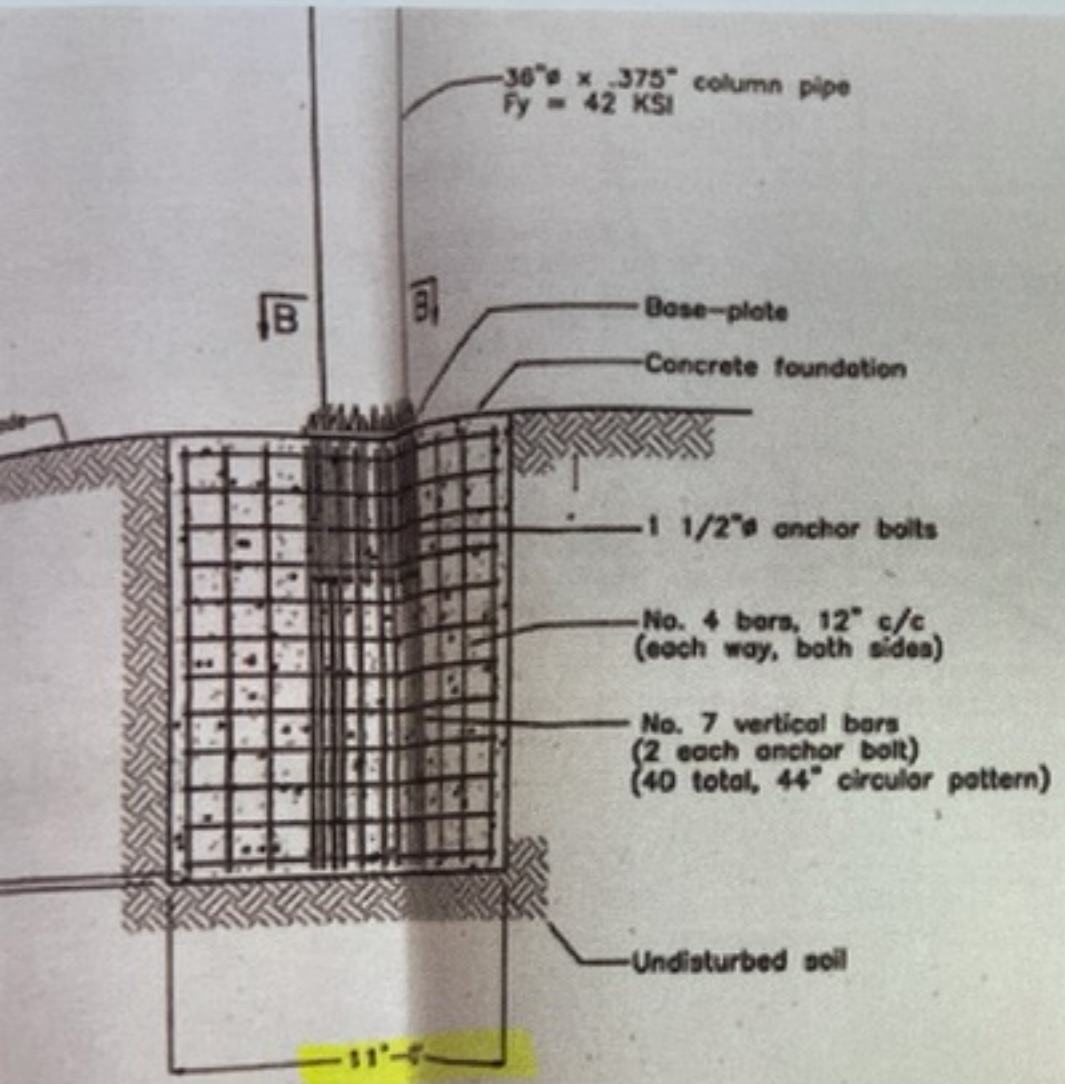
In citing these fundamental differences in the billboard permit, we are hoping that more than one positive can come out of this appeal. Due to the nature and differences of a billboard permit, we suggest that the guidelines and boundaries of the permits suspension, expiration, termination, revocation, suspension, and/or abandonment be added to the City of Fargo Sign Code. That way there can be a more straight forward interpretation that is specific to this perpetual permit.

Given the differing nature of the permit, the misclassification of its intended use and using permit guidelines of the Residential International Building Code that are not appropriate to this type of permit, we would also respectfully request that the Board overturn the administrative decision of the inspections department, grandfather this sign permit as a nonconforming sign and allow for the remainder of the sign to be erected.

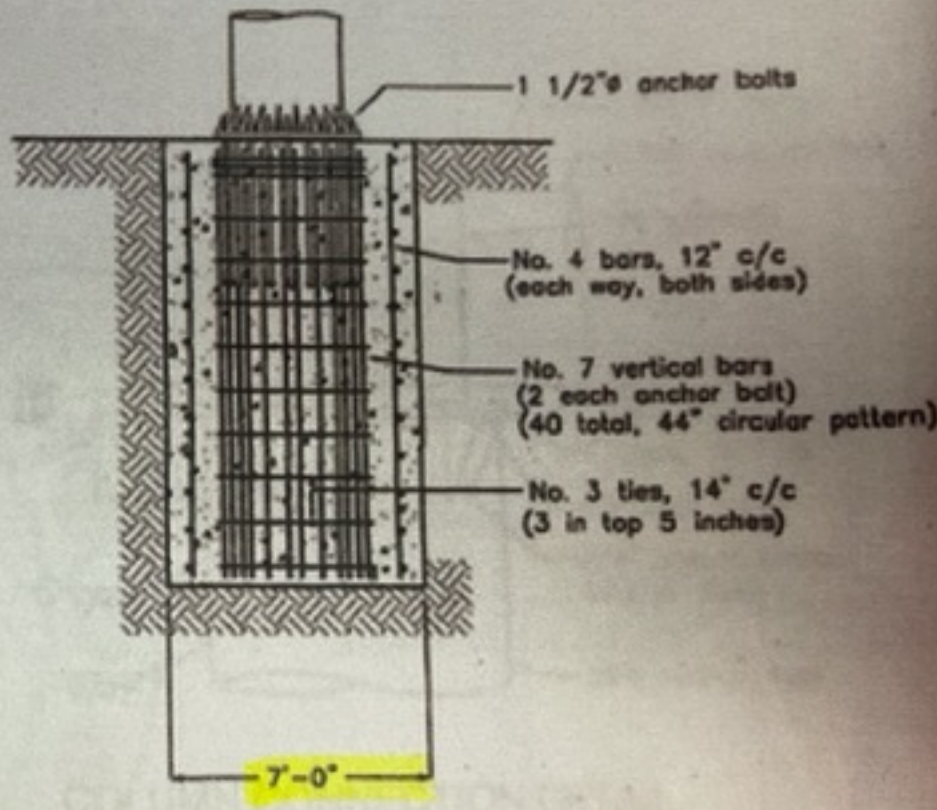
Thank you so much for your time on this matter

Josh Gilleland

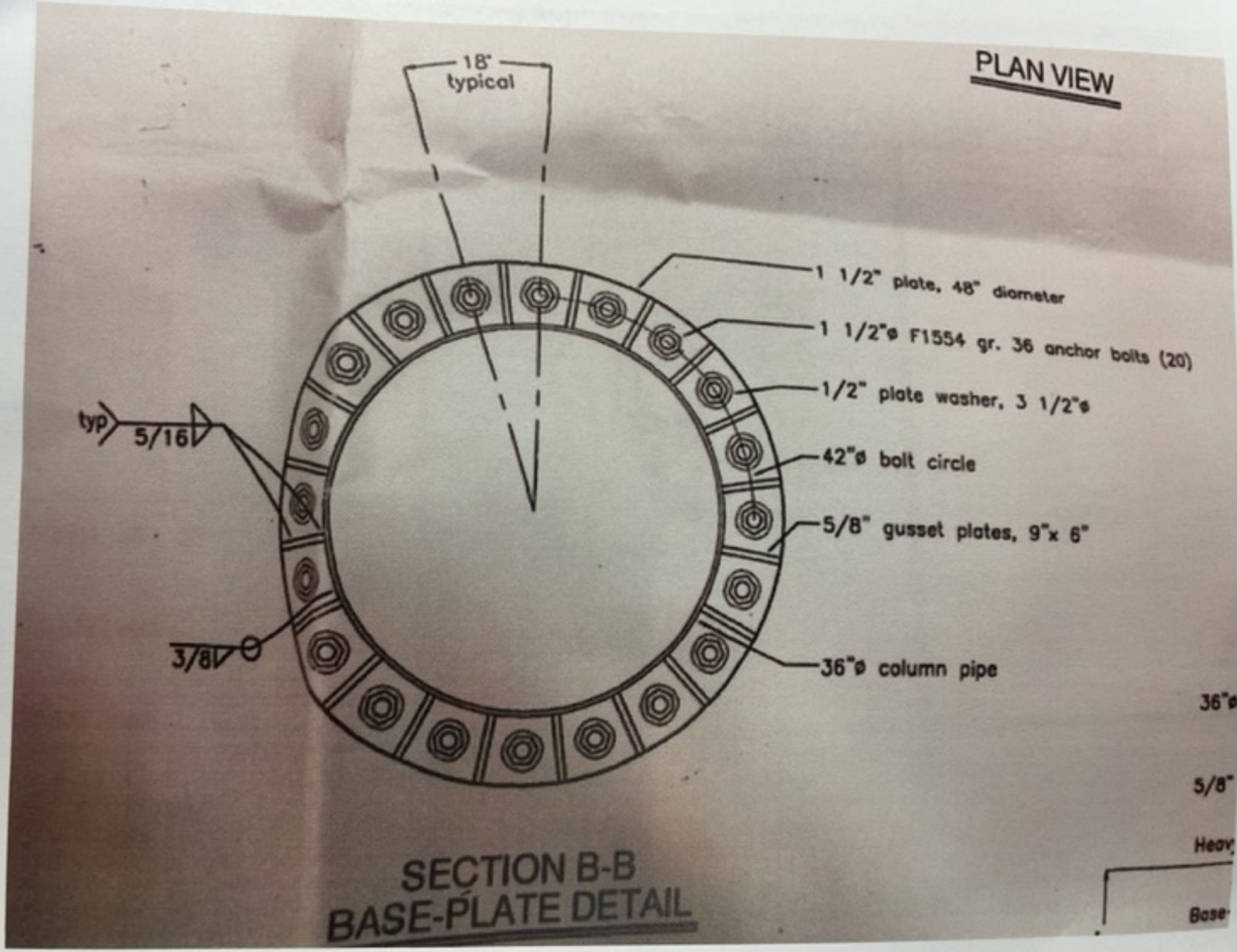
Josh Gilleland
iDigital Outdoor



SIGN FACE ELEVATION



FOUNDATION SIDE VIEW


PLAN VIEW
18"
typical
1 1/2" plate, 48" diameter
1 1/2"ø F1554 gr. 36 anchor bolts (20)
1/2" plate washer, 3 1/2"ø
42"ø bolt circle
5/8" gusset plates, 9"x 6"
36"ø column pipe
typ
5/16
3/8
SECTION B-B
BASE-PLATE DETAIL
36"ø
5/8"
Heav
Base

14'–0" x 48'–0"
MONOPOLE SIGN

CENTERMOUNT
20' V

42'–0" TO TOP

ENG. fv CAD

DATE July 2, 2007

DRAWING NUMBER 15929

sheet 1 of 2

NOTES

- Design conforms to the 2003 International Building Code.
- Design winds – 90 mph. (3–sec gust), Exp. C, per ASCE 7–02.
- Wind importance factor – Iw = 0.87
- Pipe shall conform to ASTM A252 grade 2, U.N.O.
- Structural steel shall conform to ASTM A36 except wide flange beams which shall conform to ASTM A992.
- Welding shall be in accordance with AWS standards.
- Concrete shall attain a 28 day compressive strength of f'c = 2500 psi.
- Concrete reinforcing steel shall conform to ASTM A615 grade 60.
- Structural steel shall be fabricated and erected according to the latest AISC specifications and standard practices.
- The contractor shall verify all dimensions and conditions in the field and notify the engineer of any discrepancies.
- GRC Engineering Inc. will not be supervising or monitoring the erection/installation of this structure.

THIS IS AN ORIGINAL UNPUBLISHED DRAWING. IT IS NOT TO BE REPRODUCED, COPIED OR EXHIBITED IN ANY FASHION WITHOUT WRITTEN PERMISSION OF JOHN CURRIER

Exhibit 2

ARTICLE 20-11
VIOLATIONS AND ENFORCEMENT

ARTICLE 20-11 VIOLATIONS AND ENFORCEMENT

§20-1101. Responsibility for Enforcement

This Land Development Code shall be enforced by the Zoning Administrator.

§20-1102. Types of Violations

All of the following represent violations of the Land Development Code and of law and will be subject to the remedies and penalties provided in the Land Development Code, the City Code and state law.

A.Subdivision, Development or Use Without Required Permits or Approvals

It is a violation of the Land Development Code to engage in any subdividing, development, use, construction, remodeling or other activity of any nature without obtaining all the permits, approvals, certificates and other forms of authorization required by this Land Development Code.

B.Subdivision, Development or Use Inconsistent with Permit

It is a violation of the Land Development Code to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity.

C.Subdivision, Development or Use Inconsistent with Conditions

It is a violation of the Land Development Code to violate, by act or omission, any term, condition, or qualification imposed by a decision-making body upon a required permit, certificate, or other form of authorization.

D.Subdivision, Development or Use Inconsistent with Land Development Code

It is a violation of the Land Development Code to erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure or to use any land in violation or contravention of any zoning, subdivision, or other regulation of the Land Development Code, or any amendment thereof.

E.Making Lots or Setbacks Nonconforming

It is a violation of the Land Development Code to reduce or diminish any lot area so that the setbacks or open spaces are smaller than prescribed by the Land Development Code.

F.Increasing Intensity of Use

It is a violation of the Land Development Code to increase the intensity of use of any land or structure, except in accordance with the procedural and substantive requirements of the Land Development Code.

G.Continuing Violations

It is a violation of the Land Development Code to continue any of the violations specified in this Article. Each day that a violation continues shall be considered a separate offense.

§20-1103. Remedies and Enforcement Powers

The City shall have the following remedies and enforcement powers.

A.Withhold Permits

The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon upon which there is an uncorrected violation of the Land

Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of the Land Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.

B.Revoke Permits

A permit may be revoked when the Building Official determines that:

1. There is departure from the plans, specifications, or conditions as required under terms of the permit;
2. The plans, specifications, or conditions were obtained by false representation or were issued by mistake; or
3. Any of the provisions of the Land Development Code are being violated.

C.Stop Work

With or without revoking permits, the City may stop work on any building or structure, on any land on which there is an uncorrected violation of a provision of the Land Development Code or of a permit or other form of authorization issued hereunder, in accordance with its power to stop work under the building code.

D.Revoke Plan or Other Approval

When a violation of the Land Development Code involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Board of City Commissioners may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the Board of City Commissioners may reasonably impose.

E.Injunctive Relief

The City may seek an injunction or other equitable relief in court to stop any violation of the Land Development Code or of a permit, certificate or other form of authorization granted hereunder.

F.Abatement

The City may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

G.Penalties

The penalty for a violation of this Land Development Code shall be governed by the penalty provisions of the Municipal Code, and the City may also seek such criminal or civil penalties provided by North Dakota law.

H.Other Remedies

The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of zoning, subdivision or related Land Development Code provisions.

I.Remedies Cumulative

The remedies and enforcement powers established in this Article are cumulative.

§20-1104. Enforcement Procedures

A.Non-Emergency Matters

In the case of violations of the Land Development Code that do not constitute an emergency, the Building Official shall give notice of the nature of the violation to the property owner and to any other person who is party to the agreement and to any applicant for any relevant permit, after which the persons receiving notice shall have ten (10) days, or such longer period as the Building Official allows, to correct the violation. If the violation is not corrected within the required time-frame, the Building Official and City Attorney shall use all penalties, remedies and enforcement powers available under this Article. Notice must be given in-person, by United States Mail, or by posting notice on the premises. Notices of violation must state the nature of the violation, the time period allowed for coming into compliance, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

B.Emergency Matters

In the case of violations of the Land Development Code that do constitute an emergency situation, the City shall use all remedies, penalties and enforcement powers available under this Article without prior notice, but the Building Official must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.

§20-1105. Other Enforcement Matters

A.Other Powers

In addition to the enforcement powers specified in this Article, the City may exercise any and all enforcement powers granted to them by North Dakota law.

B.Continuation

Nothing in the Land Development Code shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

Exhibit 3

2018 International Building Code (IBC)

Chapter 1 – Scope and Administration

Part 1 – Scope and Application

Section 101 - General

[A] 105.4 Validity of permit.

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

[A] 105.5 Expiration.

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grand, in writing, one or more extensions or time, for periods not more than 180 days each. The extension shall be requested in wringing and justifiable cause demonstrated

[A] 105.6 Suspension or revocation.

The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

PLANNING & DEVELOPMENT
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Fax: (701) 241-1526
E-Mail: planning@FargoND.gov
www.fargond.gov

MEMORANDUM

TO: **Fargo Board of Adjustment**

FROM: **Aaron Nelson, Planning Coordinator** AN

DATE: **July 20, 2021**

SUBJECT: **Item 3.a – Board Membership Update**

The Board of Adjustment consists of five (5) regular members and one (1) alternate member.

The alternate member position has been vacant since last year, when the previous alternate member, Jared Heller, filled the vacancy left by former regular member Russell Ford-Dunker. Last month, the City Commission appointed Michael Orth to serve as the Board's new alternate member.

This item is informational only. No action is necessary.

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MEMORANDUM

TO: **Fargo Board of Adjustment**

FROM: **Aaron Nelson, Planning Coordinator** AN

DATE: **July 20, 2021**

SUBJECT: **Item 3.b – Annual Election of Officers**

According to the Bylaws of the Board of Adjustment, "*At the regular annual meeting on the fourth Tuesday of July of each year, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year.*" As such, at the July 27, 2021 meeting, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year.

Regarding these two officers, the Bylaws state that:

> *The Chairperson shall generally preside and conduct all Board meetings, with the advice and consent of other members, may appoint committees from Board members to perform specific duties*.
>
> *The Vice Chairperson - In the event of the absence, disability, resignation or conflict of interest of the Chairperson, the Vice-Chairperson shall exercise all the powers and duties of said Chairperson, performing this function, the Vice Chairperson shall automatically become Board Chairperson and the position of Vice Chairperson shall be deemed vacant and the Board may elect from its own members a successor Vice Chairperson to fill this vacancy at its next meeting*.

Attachment

BOARD OF ADJUSTMENT
BY-LAWS
CITY OF FARGO
(ADOPTED AUGUST 27, 2013)

The Board of Adjustment for the City of Fargo, North Dakota, hereinafter referred to as the "Board," does hereby adopt these by-laws that shall govern its internal operations.

I. MEMBERSHIP

The Board shall be composed of those individuals who have been duly appointed thereto by the Board of City Commissioners.

The Board shall consist of five (5) members and one (1) alternate to be appointed for three (3) year terms by the Mayor and subject to confirmation by the City Commission.

Vacancies shall be filled in the same manner as other appointments to the Board.

II. OFFICERS

The Chairperson shall generally preside and conduct all Board meetings, with the advice and consent of other members, may appoint committees from Board members to perform specific duties.

The Vice Chairperson - In the event of the absence, disability, resignation or conflict of interest of the Chairperson, the Vice-Chairperson shall exercise all the powers and duties of said Chairperson, performing this function, the Vice Chairperson shall automatically become Board Chairperson and the position of Vice Chairperson shall be deemed vacant and the Board may elect from its own members a successor Vice Chairperson to fill this vacancy at its next meeting.

III. MEETINGS

Quorum - A quorum shall consist of four (4) members.

Annual Meeting - At the regular annual meeting on the fourth Tuesday of July of each year, the Board shall elect a Chairperson and Vice-Chairperson for the ensuing year.

Meetings - The Board shall meet on the fourth Tuesday of each month at 9:00 o'clock a.m. If the regular meeting date falls on a holiday when the City governing offices are generally closed, the meeting will be held on the regular meeting day and time of the succeeding week.

Continued Meetings - The City will send out re-notification to all interested parties when a variance request has been tabled by the Board.

Meeting Location - All regular meetings of the Board shall be held in the City Commission Room unless otherwise published or distributed in the public notice for the public hearing.

Order of Business - The items of business to be considered at any meeting shall be specified on the notice of such meetings, which shall be the meeting agenda and which shall be transmitted to each member not later than five days immediately preceding the meeting date. Items of business at any meeting will be considered by the Board in the order in which they appear on the meeting agenda and, except in the cases of emergency or mistake, no items shall be added thereto after said written agenda is transmitted to Board members.

Records - The Board shall keep a record of its resolutions, transactions, findings, and determinations; and, such record shall be a public record.

IV. VOTING

All Board members, including the Chairperson and Vice-Chairperson, shall be entitled to one equal vote at any meeting. There shall be no voting by proxy. Dissenting votes or abstentions on any matter presented to the Board shall be clearly expressed orally or in writing when voting is in process. All administrative matters, other than appeals presented for Board consideration, shall be decided by the majority vote of those present at the meeting. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the building official or to decide in favor of the applicant any matter upon which it has jurisdiction.

V. COMPENSATION

All members of the Board shall serve without compensation. When duly authorized by the Board, members thereof may attend planning conferences or meetings of planning institutions or hearings upon legislation, and the Board may pay the reasonable traveling expenses incidental to such attendance pursuant to a resolution spread upon its minutes.

VI. PURPOSE

The purpose of this Board is to provide for deviations from the literal provisions of the Zoning codes in specific instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances to those particular parcels only when it is demonstrated that such actions will be in keeping with the spirit and intent of this code.

VII. OTHER PROCEDURES

All operating procedures not specifically provided for herein shall generally be governed by "Robert's Rules of Order" which is hereby incorporated for purposes of reference. In the event any provision of "Robert's Rules of Order" are inconsistent herewith, these By-Laws shall govern.

VIII. CONTROL OF LAW

The By-Laws of the Board generally shall be governed by the applicable ordinances of the City of Fargo, laws of the State of North Dakota, and laws of the United States of America and any provisions herein inconsistent or in conflict with such laws or ordinances shall be deemed void.

IX. AMENDMENT AND REPEAL

Except when in conflict with state statutes, these By-Laws may be amended or repealed from time to time by the affirmative vote of a majority of the appointed Board members at a meeting. Said By-Laws may be made inoperative regarding any particular subject matter by the affirmative vote of a majority of Board members.

Aaron Nelson
Secretary, Board of Adjustment

Kenneth Lepper
Chairperson, Board of Adjustment