

FARGO CITY COMMISSION AGENDA
Monday, October 17, 2022 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 3, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Relating to the International Building Code (Child Care Facility Bathtub/Shower Requirements).
- 2. 2nd reading and final adoption of an Ordinance Relating to Impounded Animals-Procedure for Impounding; 1st reading, 10/3/22.
- 3. Resolution relating to the City Wildlife Management Program for the 2022-2023 season.
- 4. Findings of Fact, Conclusions and Order and Notice of Entry of Order for property located at 2315 2nd Avenue South.
- 5. Resolution relating to the qualifications of members and responsibilities of the Board of Health.
- 6. Gaming Site Authorization for Fargo Youth Hockey Association at Buffalo Wild Wings-42nd.
- 7. Applications for Games of Chance:
 - a. Centennial Elementary PTO for bingo on 10/28/22.
 - b. NDSU Dairy, Livestock and Meats Judging Team for a raffle on 3/4/23.
 - c. River Keepers for a raffle on 10/20/22.
 - d. St. John Paul II Catholic Schools for a raffle on 4/29/23.
 - e. Homeward Animal Shelter for a raffle and raffle board on 10/28/22.
- 8. Extension of a Class “AC” Alcoholic Beverage License for Fargo Moorhead Community Theater d/b/a The Stage at Island Park until 4/1/23.
- 9. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement), Permanent Easement (Levee and Retaining Wall for Flood Control) and Permanent Easement (Storm Sewer) with Jake Kruse and Jackilyn L. Kruse (Project No. FM-19-C).
- 10. Bid award for Project No. UR-22-C1.
- 11. Change Order No. 12 in the amount of \$20,457.27 for Project No. FM-16-A1.
- 12. Change Order No. 2 in the amount of \$9,910.00 for Project No. UR-22-B1.

13. Change Order No. 2 in the amount of \$47,375.00 and time extension to substantial and final completion dates to 10/24/22 and 11/14/22 for Project No. SR-22-B1.
14. Piggyback Contract with Sourcewell for the Purchase of one sewer cleaner truck in the amount of \$335,834.00 (PBC101221-VTR23).
15. Bid award for Water Loop Service Valve Installation at the FARGODOME (RFP22171).
16. Receive and file General Fund – Budget to Actual through September 2022 (unaudited).
17. Agreement with Tanner Smedshammer.
18. Notice of Grant Award with the ND Department of Health for COVID-19 Preventative Services Recovery (CFDA #93.391).
19. Agreement for School Faculty Tobacco Prevention Coordinator with West Fargo Public School District.
20. Notice of Grant Award with the ND Department of Health and Human Services for regional public health network.
21. Financial Award with the ND Department of Commerce/DCS for the Gladys Ray Shelter Emergency Solutions Grant (CFDA #14.231).
22. Contract Agreement for Services with Southeast Human Service Center.
23. Set October 31, 2022 at 5:15 p.m. as the date and time for a Public Hearing on a dangerous building at 812 7th Street North.
24. Subrecipient Agreement with Cass Clay Community Land Trust.
25. Program – Funded State and Local Task Force Agreement with the United States Department of Justice, Drug Enforcement Administration (DEA).
26. Bid award for snow groomer equipment services (RFP22156).
27. Bills.
28. Change Order No. 6 in the amount of \$8,104.25 for Improvement District No. BN-21-H1.
29. Change Order No. 3 in the amount of \$990.00 for Improvement District No. BN-22-K1.
30. Change Order No. 2 in the amount of \$34,308.25 and time extension to the Phase 3 completion date, and final and substantial completion dates to 10/7/22, 10/17/22 and 11/16/22 for Improvement District No. BR-22-B1.
31. Change Order No. 2 for a time extension to the substantial and final completion dates to 10/24/22 and 11/24/22 for Improvement District No. PR-22-F1.
32. Negative Final Balancing Change Order No. 1 in the amount of -\$33,974.70 for Improvement District No. SL-21-B1.
33. Change Order No. 1 in the amount of \$49,269.25 and time extension to the substantial and final completion dates to 10/7/22 and 10/28/22 for Improvement District No. UN-22-M1.

34. Agreement with West Fargo and Cass County for the 52nd Avenue South Reconstruction Project (Improvement District No. BN-23-A1).
35. Bid advertisement for Project No. FM-21-A2.

REGULAR AGENDA:

RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).

36. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Special Assessment List for Business Improvement District (BID) fees.
 - b. Special Assessment of unpaid utility bills.
 - c. Appeal of a Board of Adjustment decision to uphold an Administrative Interpretation on a land use definition for a Change of Use Permit application filed by Gill Investments Ltd.
 - d. CONTINUED TO 10/31/22 - Hearing on a dangerous building located at 509 21st Street North.
37. Introduction of North Dakota State University President.
38. Recommendation for appointment of a Solid Waste Utility Director.
39. Recommendations for appointments to the Fargo Youth Initiative.
40. Selection of an alternative for 1458 South River Road.
41. Request to acquire 714 12th Street North; delayed from the 10/3/22 Regular Agenda.
42. Recommendation to allow business owners who are non-residents to speak during the Resident Comment Period.
43. Recommendation to rescind the Deputy Mayor appointment.
44. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Stephen and Cheryl Hoffman, 217 15th Avenue North (5 year).
 - b. James and Jean Jorgenson, 4834 Rose Creek Parkway South (5 year).
 - c. Kenneth and Diana Thomas, 2810 1st Street North (5 year).
 - d. Greg and Nancy Bjerke, 2973 Peterson Parkway North (5 year).
45. Liaison Commissioner Assignment Updates.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

NOTICE OF HEARING
FOR SPECIAL ASSESSMENT OF
BUSINESS IMPROVEMENT DISTRICT (BID)



The Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing on special assessments for Business Improvement District (BID) fees, on Monday, October 17, 2022, at 5:15 o'clock p.m. in the City Commission Room, City Hall, Fargo, North Dakota.

Notice of assessment were mailed to property owners participating in the BID. Any person aggrieved may appeal from the action of the Board of City Commissioners by filing with the City Auditor, prior to October 17, 2022, a written Notice of Appeal stating therein the grounds upon which the appeal is based. Any person having filed such a Notice may appear before the Board of City Commissioners to present reasons why the action of the Board of City Commissioners should not be confirmed.

NOTICE OF HEARING
FOR SPECIAL ASSESSMENT OF
UNPAID UTILITY BILLS

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The Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing on special assessments for Unpaid Utility Bills, on Monday, October 17, 2022, at 5:15 o'clock p.m. in the City Commission Room, City Hall, Fargo, North Dakota.

Notice of assessment were mailed to property owners with unpaid utility bills. Any person aggrieved may appeal from the action of the Board of City Commissioners by filing with the City Auditor, prior to October 17, 2022, a written Notice of Appeal stating therein the grounds upon which the appeal is based. Any person having filed such a Notice may appear before the Board of City Commissioners to present reasons why the action of the Board of City Commissioners should not be confirmed.

MEMORANDUM

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TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR *NC*

DATE: OCTOBER 13, 2022

RE: APPEAL OF BOARD OF ADJUSTMENT DECISION FOR CHANGE OF USE PERMIT, UPHOLDING ADMINISTRATIVE INTERPRETATION ON USE

In front of the City Commission for October 17th, is a public hearing to appeal the Board of Adjustment's decision to uphold an administrative interpretation on a land use definition. The Board of Adjustment acted on an appeal of an administrative decision on September 27th to uphold the decision of the Zoning Administrator.

The application and appeal packet of information is extensive, therefore a summary of exhibits is listed below for your use:

- 1) Board of Adjustment Appeal Staff Report –dated October 13th. On the last page of this staff report, highlighted in yellow includes the findings from the Board of Adjustment hearing held on September 27th.
- 2) Change of Use Permit Summary Report – LAMA Permit Summary dated 8/26/2022
- 3) LAMA Permit Summary – 8//26/2022 (LAMA is the name of the permit software)
- 4) Additional change of use permit correspondence with supplemental information, between City staff and applicant – dated August 2022.
- 5) Permit denial letter – dated September 7, 2022
- 6) Zoning Map
- 7) Aerial Map
- 8) Parcel Report
- 9) Public correspondence for permit synopsis, dated September 7, 2022
- 10) Technical memo to Board of Commissioners, dated August 25, 2022
- 11) Applicant's Appeal applications consisting of:
 - a. October 6th Application to Appeal of a Board of Adjustment Decision
 - b. September 19th Application to Appeal an Administrative Decision
 - c. 2019 Correspondence
 - d. 2021 Correspondence
 - e. 2022 Correspondence

As part of the land use definition comparison, staff looked at the intent of the zoning district and the reasons Downtown Mixed Use Zoning treats adult oriented businesses differently than in other commercial and industrial zoning districts. When staff analyzed the purpose of the zoning district is to implement comprehensive plans and strategies such as Renaissance Zone incentives, staff



recognized that the intent of the zoning district was created to implement the goals of our Downtown Master Plans. Several plans exist that call attention to the need to create a vibrant community focused on storefront and urban design. The City's master plans are crafted through the community's values they advocate for and set forth as they develop their vision. The public entrusts public staff members and elected to uphold those strategic plans through the implementation of tools like the zoning ordinance.

The appeal and discussion in front of the City Commission can be narrowed down to the following topics:

- 1) Is the City of Fargo within their authority and zoning administrative powers as set forth in the City's Municipal Code and as set forth in the Century Code?
- 2) Does the reference of "stock in trade" in "Adult Bookstore" Land Development Code definition, refer to a collective set of a merchandise or is it limited to books and periodicals and printed materials only?
- 3) Is city staff correctly applying the City's Comprehensive Plans (including Renaissance Zone Plan and Downtown InFocus) through the implementation of the Land Development Code (otherwise known as the Zoning Ordinance)?

The appellant and staff will both be present as part of the public hearing for this item to provide the background for your review and ruling of this appeal.

Suggested Motion:

The Board of City Commissioners has reviewed the application and supporting documentation for a Change of Use Permit and find the proposed business meets the definition of an "Adult Bookstore" and therefore deny the original application for a Change of Use Permit. Upholding the Board of Adjustment decision reaffirming the Zoning Administrator's denial of the Change of Use Permit based that the proposed use is an Adult Bookstore and that use is not allowed in the DMU, Downtown Mixed Use zoning district.

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

Item No: 2.a

Date: September 22, 2022

Update: October 13, 2022

Appellant: Josh Porter, Romantix, Inc. and Gill's Investment LTD

Status: Board of Adjustment – September 27, 2022

Appeal of BOA Decision to City Commission – October 17, 2022

Summary of Record

Background:

A Change of Use Permit application was submitted on August 15, 2022. Following staff's initial review of the submitted application, additional information was requested from the applicant to better understand the proposed Use.

In a letter dated September 7, 2022, the Zoning Administrator made the determination that the proposed Use was an Adult Bookstore, as defined in Fargo Municipal Code Article 20-1202 is a Use Not Allowed for the DMU: Downtown Mixed Use zoning district. The letter included the process to appeal an administrative decision as outlined in the Land Development Code.

An application to Appeal of Administrative Decision was filed by the appellant on September 19, 2022, who believes the denial of the Change of Use Permit is incorrect. The appellant argues that the business model for the proposed use is "Retail, Sales and Service", a Permitted Use in the Downtown Mixed Use zoning district.

Question Before the Board:

Did staff err in its determination to deny the Change of Use Permit application from Gill Investments LTD, filed August 15, 2022 basing the determination that the proposed Use is an "Adult Bookstore" which is not an allowed Use in the Downtown Mixed Use zoning district?

Exhibits:

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

- Exhibit 1 – Change of Use Application and Building permit summary
- Exhibit 2 - Follow-up documentation requested by the Zoning Administrator to base the determination.
- Exhibit 3 – Denial Letter
- Exhibit 4 – Zoning map & aerial photo for the property at 74 Broadway
- Exhibit 5 – Parcel Report for the property at 74 Broadway
- Exhibit 6 – Permit Synopsis shared with media
- Exhibit 7 – Technical memo to Board of Commission
- Exhibit 8 – 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 74 Broadway, Fargo, ND is zoned DMU: Downtown Mixed Use.
2. A Permanent Sign Permit (2207-0834-SIGN) for the appellant, Romantix at 74 Broadway was issued on July 26, 2022 to Indigo Signworks.
3. The Change of Use Permit application submitted was dated August 15, 2022.
4. The Notice of Denial letter was dated September 7, 2022.
5. The Application to Appeal an Administrative Decision was submitted September 16, 2022.

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 (Definitions) Section 20-1203 – Use Categories

A. Basis for Classifications - Use categories classify land uses and activities into use categories based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.

1. Principal Uses - Principal uses are assigned to the category that most closely describes the nature of the principal use. The "Characteristics" subsection of each use category describes the common characteristics of each principal use.

a. Developments with Multiple Principal Uses

When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore and bakery, for example, would be classified in the Retail Sales and Service category because all of the development's principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category.

b. Accessory Uses

Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in the regulations. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.

c. Use of Examples

The "Examples" subsection of each use category lists common examples of uses included in the respective use category. The names of these sample uses are generic. They are based on common meanings and not on what a specific use may call itself. For example, a use that

calls itself "Wholesale Warehouse" but that sells mostly to consumers, is included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales and Service category.

B. Similar Use Interpretation Criteria

The following considerations shall be used in making similar use interpretations (See also Sec. 20-0401-F):

1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
2. The relative amount of site area or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;
4. The customer type for each activity (retail or wholesale);
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Vehicles used with the activity;
9. The relative number of vehicle trips generated by the use; and
10. How the use advertises itself.

Land Development Code (Definitions) Section 20-1201 – Words Defined

2. **Adult Bookstore:** *An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.*
3. **Adult Cinema:** *An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.*
4. **Adult Entertainment Facility:** *An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.*
5. **Adult Entertainment Center:** *An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.*
59. **Specified Anatomical Areas:**
 - a. *Less than completely and opaquely covered:*
 - (1) *Human genitals, pubic region;*
 - (2) *Buttocks;*
 - (3) *Female breast below a point immediately above the top of the areola; and*
 - b. *Human male genitals in a discernibly turgid state, even if completely and opaquely covered.*
60. **Specified Sexual Activities:**
 - a. *Human genitals in a state of sexual stimulations or arousal;*
 - b. *Acts of human masturbation, sexual intercourse, or sodomy; and*

c. Fondling of human genitals, pubic region, buttock or female breast.

Land Development Code (Definitions) Section 20-1203.D – Use Categories

6. Retail Sales and Service

a. Characteristics: Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses: Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples: Examples include uses from the four following groups:

(1) Sales-Oriented: Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

Official Zoning Map:

74 Broadway is zoned DMU: Downtown Mixed Use.

Land Development Code Section 20-0212 - DMU, Downtown Mixed-Use District

A. Description

The DMU, Downtown Mixed-Use district is intended to preserve and enhance the City's downtown area. The district allows a broad range of uses in order to enhance downtown Fargo's role as a commercial, cultural, governmental and residential center. In recognition of existing public facility capacity and downtown planning goals, very intensive development is allowed, with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

Land Development Code 20-0401 – Use Table

Table 20-0401 lists the uses allowed within zoning districts.

A. Use Categories.

All of the use categories listed in Table 20-0401 are explained in [Sec. 20-1203](#). The second column of the use table contains an abbreviated explanation of the respective use category. If there is a conflict between the abbreviated definition and the full explanation contained in [Sec. 20-1203](#), the provisions of [Sec. 20-1203](#) will control.

B. P *Uses Permitted By-Right. A "P" indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.*

C. C *Conditional Uses. A "C" indicates that a use category is allowed only if reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of [Sec. 20-0909](#). Conditional Uses are subject to all other applicable regulations of this Land Development Code.*

D. /C *Uses Subject to Specific Conditions. A "P" or a "C" that is accompanied by the symbol "/C" indicates that the listed use type is subject to use-specific conditions. The standards are listed alphabetically in [Sec. 20-0402](#).*

E. **Uses Not Allowed.** A "-" indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Land Development Code.

F. **New or Unlisted Uses.**

If an application is submitted for a use type that is not listed in the use table, the Zoning Administrator shall be authorized to make a similar use interpretation based on the use category descriptions of [Sec. 20-1203](#) and the similar use interpretation criteria of [Sec. 20-1203-B](#). If the Zoning Administrator determines that the proposed use does not fit any of the use category descriptions of [Sec. 20-1203](#), no similar use interpretation shall be made. In the event that a similar use interpretation cannot be made, the Zoning Administrator shall be authorized to allow the proposed use type as a conditional use in the LI district or as a use permitted by-right in the GI district.

Use Category	Definition (Excerpt: See Sec. 20-1203)	Specific Use Type	Zoning Districts																					
			A G	S R 0	S R 1	S R 2	S R 3	S S R 4	S S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
Commercial																								
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public... they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		-	-	-	-	-	-	-	-	-	-	P	-	-	P	-	P	P	P	P	-	-	

Land Development Code 20-0402 – Use Standards (Note: These Specific Conditions are not applicable to the DMU: Downtown Mixed Use zoning district, but provide reference to the conditions that must be met for the “Adult Entertainment Center” Use Category when located in GC: General Commercial, LI: Limited Industrial and GI: General Industrial zoning districts.)

A. Adult Entertainment Center

Adult Entertainment Centers shall be subject to all of the following standards:

1. An adult entertainment center shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult entertainment center shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with [Chapter 25](#) of the Fargo Municipal Code.
3. An adult entertainment center shall not be located within 1,250 feet of any other adult entertainment center.
4. An adult entertainment center must prohibit entrance by persons less than 18 years of age.
5. An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.
6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.
7. The business premises of an adult entertainment center that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

Established Master Plans

North Dakota Century Code outlines municipalities may establish official master plans to conserve and promote the public health, safety and general welfare of the municipality. The City of Fargo adopted its Go2030 Comprehensive Plan and chapter addendums including the Downtown In Focus Master Plan to establish the community’s vision for the future of Fargo including the Downtown neighborhood.

The 2012 Go 2030 Plan visions Fargo’s Downtown Neighborhood as a walkable destination center.

The 2007 Growth Plan goals outline a livability and quality of life.

In 2018, Fargo’s Downtown In Focus Master Plan laid out a vision:

Downtown Fargo is a family-friendly destination, full of variety and welcoming to all. We celebrate the diversity of our Downtown residents and businesses, and we cultivate creativity and the arts as part of the day-to-day Downtown experience. New local jobs make Downtown a magnet for innovators and a place where great ideas are demonstrated. Our streets are walkable and vibrant, rich with color and texture and designed for a sustainable future. New multi-use trails connect Downtown to the Red River and beyond. As a creative center, Downtown offers big-city amenities and talent within a small-town atmosphere. We welcome new buildings but also value preservation, resulting in a Downtown that is the perfect mix of old and new...classic and modern, a must-see of the Midwest.

Staff Analysis

Staff has determined that Change of Use application at 74 Broadway, dated August 15, 2022, is denied due to the interpretation that the proposed use is an Adult Bookstore which is a Use Not Allowed in the DMU: Downtown Mixed Use zoning district according to the Use Table in Article 20-04 of Chapter 20 – Land Development Code of the Fargo Municipal Code of Ordinances.

The DMU, Downtown Mixed Use zoning district is only located in the historic downtown area and outlines design standards including, but not limited to materials allowed, lighting and ground floor window transparency. These increased design standards are intended to stimulate and protect investment throughout the Downtown. Fargo’s Zoning process refers to how zoning meets the Land Development, applicable Growth Plan and other adopted policies of the City. Downtown In Focus Master Plan vision is a family-friendly destination with a Goal to 1.7 - Address quality of life issues shared by Downtown residents. The visual examples and product list do include “Adult” oriented items that differ from regular retail uses.

In summary, the zoning administrator evaluated the submitted floor layout, retail categories, proposed inventory and sales information, and limited age for store admission submitted by the Appellant and determined the proposed Use falls into the definition of an “Adult Bookstore” as outlined in 20-1202.2 where a substantial or significant portion of its stock in trade are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

Staff Recommendation to Board of Adjustment

Staff recommends that the Board of Adjustment affirm staff’s decision to Deny the Change of Use Permit, based on the determination that the Proposed Use is considered an “Adult Bookstore” which is a Use Not Allowed in the Downtown Mixed Use zoning district.

Board of Adjustment Decision: September 27 Findings of Fact

At the September 27, 2022 Board of Adjustment meeting the Board by a vote of 4-1 affirmed staff's decision to Deny the Change of Use Permit, based on the determination that the Proposed Use is considered an "Adult Bookstore" which is a Use Not Allowed in the Downtown Mixed Use zoning district.

The definition of an "Adult Bookstore" was noted by the dissenting vote of the member of the Board of Adjustment as reasoning for voting for reversal. Here is that definition:

***Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.*

Staff weighed this definition with the other four Adult Use definitions noting each had specific unique characteristics for each category, but collectively have "Adult" content depicting or describing specified sexual activities or specified anatomical areas:

- "Adult Bookstore" describes merchandise (i.e.; stock in trade, books, magazines and other periodicals)
- "Adult Cinema" describes a movie theater viewing component
- "Adult Entertainment Facility" describes live performance
- "Adult Entertainment Center" is inclusive of each of the above definitions or any combination.

The Land Development Code acknowledges that not every business model would align exactly with listed examples entirely, but categorized items provided by the applicant into the "stock in trade" component of the list of example merchandise for "Adult Bookstore". [Merriam-Webster defines "stock in trade"](#) as "the equipment, merchandise, or materials necessary to or used in a trade or business."

Staff also weighed the intent of restricting Adult oriented uses in the Land Development Code, which framed the zoning administrator's denial. Article 20-0401.F of the Fargo Land Development Code states:

If an application is submitted for a use type that is not listed in the use table, the Zoning Administrator shall be authorized to make a similar use interpretation based on the use category descriptions of [Sec. 20-1203](#) and the similar use interpretation criteria of [Sec. 20-1203-B](#).

The dissenting board member also based his vote on the zoning compliance correspondence from city staff based dated 2019 and more recent correspondence the applicant received from staff in regards to definition clarity of "Adult Bookstore". Staff's perspective on the previous interpretations cited in 2019 is from the point that the burden of proof is placed on the applicant to meet the code and the intent of the code. In specific correspondence from staff via email, the service is related to customer service to answer a question, but does not indicate permit approval. Each question staff receives is weighed with the intent of the policy and comprehensive plans as applied to that specific geographical site.

In the Appeal of the Board of Adjustment Decision, the appellant cites the [definition of "Matter" by Merriam-Webster](#) as "the subject or substance of a discourse or writing.", but this definition is just one of many included in the online dictionary definition. Again, the LDC definition is:

***Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on **matter** depicting or describing specified sexual activities or specified anatomical areas.*

Another applicable definition in that same definition citing is: “a subject under consideration” indicating that the word “matter” refers to the subject of specified sexual activities or specified anatomical areas. The example photos of the proposed store concept contain many products with a subject matter that depicts specified anatomical areas both in graphic products packaging and physically shaped merchandise.

Appeal of a Board of Adjustment Decision and Recommendation:

Appeals from the action of the Board of Adjustment may be taken to the Board of City Commissioners by filing an appeal with the Zoning Administrator. On October 6, 2022 the applicant filed an Appeal of the Board of Adjustment to the Zoning Administrator.

The Board of City Commissioners shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application.

Recommended Motion:

The Board of City Commissioners has reviewed the application and supporting documentation for a Change of Use Permit and find the proposed business meets the definition of an “Adult Bookstore” and therefore deny the original application for a Change of Use Permit. Upholding the Board of Adjustment decision reaffirming the Zoning Administrator’s denial of the Change of Use Permit based that the proposed use is an Adult Bookstore and that use is not allowed in the DMU, Downtown Mixed Use zoning district.

LAMA Permit Summary - 8/26/2022

Permit Number: 2208-0570-COU
Type: Change of Use
Location: 74 Broadway N
Applicant: Gill's Investment LTD
 2435 Parkview Dr S
 FARGO, ND 58104

Owner: Gill's Investment LTD
Description: Change the existing space tp be used as retail

Contractors:

Name	License	Phone
------	---------	-------

Fees:

Type	Amount	Paid
Building:	\$50.00	Paid: No
Plan Review:	\$50.00	Paid: Yes

Inspections:

Type	Date	Status
Final Building	Unscheduled	Unscheduled

Inspection Correction Items

Inspection Comments

Status Information:

Status	Date
Application Submittal	8/15/2022
Completeness Review	8/15/2022
Plan Review Fee Payment	8/15/2022

Not Finaled

Details:

Property	Value
Change of Use	Yes
Apply Building Fee	Yes
Apply Plan Review Fee	Yes
Parcel Number(s)	01-2381-00180-000
Property Owner	Gill's Investment LTD
Zoning	DMU
Property Location	74 Broadway N
Lot Number	N 4 2
Legal Description	*02/23/88 SPL/FR 2381-01700 & 2381-01950
Extraterritorial Area	No
Block Number	1
Lot Frontage (ft)	0.00
Neighborhood	Downtown
Subdivision	Roberts
Parcel Area (ft ²)	16,331.98
Lot In Floodplain	No
Is Residential	No
Land Use	Commercial
Work Class	IMC
Code Edition	2021 IBC
Establishment Name	Romantix

Nicole - Planning - 297 7782



INSPECTIONS
225 4TH STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1561
FAX: 701-476-6779

Date: 8/26/2022

Plan Review	Romantix
	Permit 2208-0570-COU (COU-COMM) 74 Broadway N

Project: Change the existing space tp be used as retail

To: Gill’s Investment LTD
2435 Parkview Dr S
FARGO, ND 58104
Ph:
E-mail:

Main Use:
Type of Construction:
Sprinkler:
Height :
Stories:
Gross floor area:
Occupant Load:
Flood Elevation:
Exits:
Com check:
Smoke Detectors:
Fire Alarm:
Roofing Material:
Heating system:

From: Christine Rose
Deputy Inspections Administrator
Telephone: 7014766753
E-Mail : crose@fargond.gov

The following codes apply to this building:

- | | |
|--|---|
| 2021 International Building Code | 2021 International Mechanical Code |
| 2021 International Fire Code | 2021 International Fuel Gas Code |
| 2021 UPC Code and ND Amendments | 2021 International Energy Conservation Code |
| 2021 Laws, Rules, and Wiring Standards of North Dakota | 2021 International Existing Building Code |
| | Fargo Land Development Code |

This review does not address any covenants or easements assigned to the property. Adherence to the stipulations contained in any covenants and or easements concerning this property are solely and exclusively the responsibility of the property owner.

This review does not address any of the requirements contained in the ADA, Americans with Disabilities Act. Consequently, no stipulations are made or implied as to compliance or noncompliance

with those requirements. Federal law may require this construction project to conform to the ADAAG, Americans with Disabilities Act Accessibility Guidelines for building and facilities. A signed North Dakota ADAAG Conformance Statement is required to be on file in our office, see attachment #1.

This plan review becomes void if construction is not begun within 180 days or is suspended or abandoned at any time for 180 days after work is commenced. Reviews 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, in the construction documents and other data.

The permit applicant/holder/owner at all times remains responsible for ensuring that the construction, plans, and specifications comply with all requirements of all City Codes and other applicable requirements.

The following items must be addressed before a building permit may be issued for this project. Once these items have been addressed to our satisfaction and all the associated departmental sign offs have been received, a building permit may be issued for the project upon your request. If I can be of further assistance please call.

A. General review notes

1. If changes occur to the plans or specifications as a result of this review or for any other reason, revisions shall be issued as required and forwarded to this office.
2. A copy of this review, all responses, plans or specifications changes, or any other subsequent information pertaining to this project shall be provided to the contractor for his information.
3. This building and its associated site shall be accessible per IBC Section 1009, Chapter 11 and ANSI.
4. Complete and return the following forms:
 - a. ADAAG Conformance Statement (return copy, send original to address shown on the form)
5. Public owned projects only: if this project has separate prime contractors, they may each be required to acquire a building permit in addition to their respective trade permit prior to commencing any work on this project. Please respond if separate building permits will be required.
6. Safety glazing shall be provided as required per IBC Chapter 24.
7. Fire extinguishers shall be provided per IBC Section 906 and during construction per IBC Section 3309.

8. You will be required to provide egress illumination as described in IBC section 1008 and illuminated exit signs per section 1013.
9. There shall be no hazardous materials in this building over the allowable quantities per IBC Sections 307 and 414. Please verify and respond.
10. There is a maximum of ½" height for the thresholds into the building per IBC Section 1010.1.6.
11. A vapor barrier shall be provided under the concrete slab per IBC Section 1907.
12. Special inspections and reporting (if required) shall be provided on this project per IBC Sections 1704 and 1705. **The permit applicant shall submit a statement of special inspections as required by IBC Sections 1704 and 1705.** A copy of a summary is attached for your use. Please provide a list of special inspectors and their qualifications. **Special inspector shall provide this office with a final report documenting required special inspections and correction of any discrepancies noted in the inspections as required by IBC Section 1704.2.4. A certificate of occupancy may not be issued for this project until the final report is received by this office.**
13. Provide information on compliance with the currently adopted International Energy Conservation Code. Comply with IECC Sections C401-C405 or C407 as required. Computer-generated documentation (e.g. ComCheck) will be allowed to indicate total building performance as per IECC Section C407.6. **Your summary must include building envelope, mechanical systems, water heating, interior lighting and electrical power systems.**
14. Commissioning of new Buildings. Per the requirements of the International Energy Conservation Code, section C408, new buildings with 480 kBtu/h Cooling and 600 kBtu Heating capacities are required to undergo commissioning. It is designer's responsibility to plan and apply all required commissioning procedures and fulfill the required documentation as prescribed in section C408. The registered design professional is required to provide copy of Commissioning Report to the Building's owner within 90 days from date of receipt of Certificate of Occupancy (IECC sections C408.2.5 and C408.3.2). Statement from the registered design professional stating that commissioning report is provided to owner shall be submitted to our office.
15. **Please submit a FEMA Floodproofing Certificate for Non-Residential Structures.** You can use the following link to download the original form: https://www.fema.gov/sites/default/files/2020-05/FF-086034_Nonres_Floodproofing_RE_11Feb2020.pdf.
16. **Please submit a FEMA Floodproofing Certificate for Residential Structures.** https://www.fema.gov/sites/default/files/documents/fema_nfip-basement-floodproofing-certificate-form-206-fy-21-122.pdf.
17. Tile in restrooms must be smooth and non-porous. Grout must be non-sanded and sealed. FRP must be sealed with quality sealant to be compliant.
18. The registered designer for this project shall approve the engineered truss design drawings as they become available and forward them to this office for review.

19. There have been no plans submitted for the systems for this project. These systems shall comply with all the requirements of the City of Fargo and its adopted codes. These plans will be allowed as deferred submittals per IBC Section 107.3.4.1. Please review and approve these plans for compliance and forward them to this office for our review. No work can start on these systems until approved.
20. There shall be no storage under stairs unless protected as required per IBC Section 1011.7.3. Access to storage shall not be from within a fire resistance rated stair enclosure.
21. All doors shall have landings per IBC Section 1010.1.5.
22. Draftstopping and fireblocking shall be provided in combustibles concealed construction per IBC Section 718.
23. Suspended ceiling spaces used as plenums shall comply with IMC Chapter 6.
24. Interior wall and ceiling finishes, decorations, and trim shall comply with IBC Chapter 8 and plastics with Chapter 26.
25. Provide opening and penetration protection of fire resistance rated and non-fire resistance rated assemblies per IBC Chapter 7.
26. Please provide information on how you intend to vent your fireplaces.
27. There shall be no openings into or penetrations of shafts and exit enclosures other than for the shaft use or serving the shaft and exit enclosures per IBC Section 713.8.
28. Your assembly areas must be posted for occupant load per IBC Section 1004.9.
29. Please verify whether your structure and any cranes used during construction will require FAA approval for this project.
30. Is this facility provided with a fire alarm system?
31. There shall be no balconies, canopies, or other projections that encroach on the public right-of-way per IBC Section 3202.

B. Plan notes

Planning

1. Per information shared via correspondence with tenant representative, land use is determined not to be permitted in the DMU, Downtown Mixed Use zoning district, per Section 20-0401 and 20-1202).
(*Cert of Occ*)

Inspections

2. Interior plans need to be submitted and approved prior to permit and occupancy

Please submit all revised sheets/documents to our office



INSPECTIONS
 225 4th STREET NORTH
 FARGO, NORTH DAKOTA 58102
 PHONE: 701-241-1561
 FAX: 701-476-6779

**Special Inspection Statement and
 Summary Schedule**

Print in Ink or Type your responses

Project Name: _____
 Project Location: _____

Description (1)	Type of Inspector (2)	Specific Report Frequency (3)	Assigned Firm (4)

Note: This schedule shall be filled out and included in a Special Inspection and Testing Program. (If not otherwise specified, assumed program will be "Effectiveness of the International Code" in IBC preface, Chapter 17, and "User Notes" at beginning of Chapter 17 as contained in the City of Fargo Building Code)

- (1) Use descriptions per IBC Chapter 17.
- (2) Special Inspector – Technical (SIT); Special Inspector – Structural (SIS)
- (3) Daily, Weekly, monthly, per test/inspection, per floor, etc.
- (4) Name of Firm contracted to perform services.

ACKNOWLEDGEMENTS
 (Each appropriate representative shall sign below)

Owner: _____	Firm: _____	Date: _____
Contractor: _____	Firm: _____	Date: _____
Architect: _____	Firm: _____	Date: _____
SER: _____	Firm: _____	Date: _____
SI-T: _____	Firm: _____	Date: _____
SI-S: _____	Firm: _____	Date: _____
TA: _____	Firm: _____	Date: _____
F: _____	Firm: _____	Date: _____

Legend: SER = Structural Engineer of Record SI-T = Special Inspector - Technical TA = Testing Agency
 SI-S = Special Inspector - Structural F = Fabricator

If requested by engineer/architect of record or building official, the individual names of all prospective special inspectors and the work they intend to observe shall be identified as an attachment.

Accepted for the Building Department By _____ Date _____

ADAAG CONFORMANCE STATEMENT
NORTH DAKOTA DIVISION OF COMMUNITY SERVICES
 SFN 19701 (06/03)

(This form must be submitted for new construction, alternations and additions to buildings and facilities subject to the Americans with Disabilities Act)

AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG) CONFORMANCE STATEMENT										
Name & Building Address	Owner									
	City/County									
Date Construction to Start	Projected Completion Date									
Type of Construction <table style="width: 100%; margin-left: 20px;"> <tr> <td style="width: 30%;">New Building</td> <td style="width: 10%;"><input type="checkbox"/></td> <td style="width: 30%;">Sq. Ft. _____</td> </tr> <tr> <td>Addition</td> <td><input type="checkbox"/></td> <td>Sq. Ft. _____</td> </tr> <tr> <td>Alteration</td> <td><input type="checkbox"/></td> <td>Sq. Ft. _____</td> </tr> </table>		New Building	<input type="checkbox"/>	Sq. Ft. _____	Addition	<input type="checkbox"/>	Sq. Ft. _____	Alteration	<input type="checkbox"/>	Sq. Ft. _____
New Building	<input type="checkbox"/>	Sq. Ft. _____								
Addition	<input type="checkbox"/>	Sq. Ft. _____								
Alteration	<input type="checkbox"/>	Sq. Ft. _____								
Describe Alteration:										
Type of Occupancy/Use (Refer to Occupancies and Divisions defined in the International Building Code):										
I certify, to the best of my professional judgment, that the plans and specifications for the above referenced building or facility conforms with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as adopted in North Dakota Century Code Section 54-21.3-04.1.										
_____ Name of Design Professional	_____ Firm									
_____ Signature	_____ Phone Number Date									
Send To: Division of Community Services 1600 East Century Avenue, Suite 20 PO Box 2057 Bismarck, ND 58502-2057										

Submit a copy to the Inspections Division

Attachment #1

LAMA Permit Summary - 8/26/2022

Permit Number:	2208-0570-COU
Type:	Change of Use
Location:	74 Broadway N
Applicant:	Gill's Investment LTD 2435 Parkview Dr S FARGO, ND 58104
Owner:	Gill's Investment LTD
Description:	Change the existing space tp be used as retail

Status Information:

Status	Date
Application Submittal	8/15/2022
Completeness Review	8/15/2022
Plan Review Fee Payment	8/15/2022

Not Finaled**Contractors:**

Name	License	Phone

Fees:

Type	Amount	Paid
Building:	\$50.00	Paid: No
Plan Review:	\$50.00	Paid: Yes

Inspections:

Type	Date	Status
Final Building	Unscheduled	Unscheduled

Inspection Correction Items**Inspection Comments****Details:**

Property	Value
Change of Use	Yes
Apply Building Fee	Yes
Apply Plan Review Fee	Yes
Parcel Number(s)	01-2381-00180-000
Property Owner	Gill's Investment LTD
Zoning	DMU
Property Location	74 Broadway N
Lot Number	N 4 2
Legal Description	*02/23/88 SPL/FR 2381-01700 & 2381-01950
Extraterritorial Area	No
Block Number	1
Lot Frontage (ft)	0.00
Neighborhood	Downtown
Subdivision	Roberts
Parcel Area (ft ²)	16,331.98
Lot In Floodplain	No
Is Residential	No
Land Use	Commercial
Work Class	IMC
Code Edition	2021 IBC
Establishment Name	Romantix

From: [Mark Williams](#)
To: [Nicole Crutchfield](#)
Subject: FW: Fargo
Date: Tuesday, August 16, 2022 7:43:20 AM

FIY

From: Josh Porter <jporter@romantixexchange.com>
Sent: Monday, August 15, 2022 9:01 PM
To: Mark Williams <MWilliams@FargoND.gov>
Subject: Re: Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Mr Williams

Let me first apologize. I am writing this from a cell phone, as I'm stuck in a hotel in Madison WI right now.

I will send you several email chains from our attorney and Fargo's planning department confirming the interpretation of adult in Fargo.

In addition I would like to send you a complete floorplan showing where everything will be located. Unfortunately i dont have access to that from my cell phone.

I can explain the store is approximately 3300 sf. 600 sf will be storage and restroom. 2700 will be retail. 1400 sf will be devoted to apparel. 200 games and gifts. 300 sf to bath and body products. 600 sf will be sexual wellness products. 200 sf to the cash wrap. We will have no adult DVDs, Arcades, or Theaters. In addition the existing store will be closing shortly after the new year.

I have attached several pictures of a recently opened store. This store was opened 3 weeks ago, the Fargo store will be very similar.

I hope after reviewing the emails and the information here you will come to the same conclusion. Our store meets the definition of general retail in Fargo ND and does not require any additional permitting.

I will certainly provide any additional information you may need. If you have a moment to talk please let me know. I can make myself available anytime.

Regards,
Josh Porter
480 266 6888

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: Mark Williams <MWilliams@FargoND.gov>
Sent: Monday, August 15, 2022 2:35:36 PM
To: Josh Porter <jporter@romantixexchange.com>
Subject: Fargo

Josh,

Per our earlier conversation, I have attached my contact information. Please send me the correspondence you have as well as a description of the retail sales and service for the property.

Sincerely,
Mark

Mark Williams

Assistant Planning Director | Department of Planning & Development
City of Fargo | 225 Fourth Street North | Fargo, ND 58102
Phone: (701) 241-1535 | Email: mwilliams@fargond.gov

From: [Mark Williams](#)
To: [Nicole Crutchfield](#); [Nancy Morris](#)
Subject: FW: Romantix in Fargo
Date: Monday, August 22, 2022 1:02:47 PM

FYI

----- Original message -----

From: Josh Porter <jporter@romantixexchange.com>
Date: 8/22/22 12:39 PM (GMT-06:00)
To: Mark Williams <MWilliams@FargoND.gov>
Cc: Mark Labertew <mlabertew@romantixexchange.com>, Kember Anderson <KAnderson@FargoND.gov>, Tim Mahoney <TMahoney@FargoND.gov>
Subject: Romantix in Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning everyone,

Thank you again for the time and conversation on Thursday.

Based on our conversation we are looking forward to getting this new store open on September 1. I'm concerned, however that I just received a disturbing message from the Landlord; saying there is a problem with their "change of use"?

On Thursday 8/18 our conversation ended positively and I was told to move forward. What happened in the last few days?

I'd also like to ask, why the landlord needs a change of use?

On June 10, 2022 Donald Kress confirmed the address was zoned DMU which permits retail sales and services.

I look forward to hearing from you.

Thank you for your time.

Regards,

Josh Porter

480 266 6888

From: [Mark Williams](#)
To: [Nicole Crutchfield](#)
Subject: FW: Romantix
Date: Tuesday, August 16, 2022 7:43:25 AM

FYI

From: Josh Porter <jporter@romantixexchange.com>
Sent: Monday, August 15, 2022 9:06 PM
To: Mark Williams <MWilliams@FargoND.gov>
Subject: Fwd: Romantix

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Mr Williams

Below is the email chain between our attorney and Mr. Kress.

Please let me know if you have any additional comments.

Thank you
Josh

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: BRADLEY REICH <suite600@aol.com>
Sent: Monday, August 15, 2022, 1:17 PM
To: Josh Porter <jporter@romantixexchange.com>
Subject: Fwd: Romantix

Begin forwarded message:

From: Donald Kress <dkress@FargoND.gov>
Subject: RE: Romantix
Date: June 10, 2022 at 3:43:25 PM MDT
To: BRADLEY REICH <suite600@aol.com>

Brad,

74 Broadway is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retail sales and service, which is described in our Land Development Code (LDC) as:

6. Retail Sales and Service

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

LDC 20-1203.6

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

Thank you.

From: BRADLEY REICH <suite600@aol.com>

Sent: Friday, June 10, 2022 11:04 AM

To: Donald Kress <dkress@FargoND.gov>

Subject: Romantix

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello Mr. Kress. As per your request, and in accordance with our telephone conversation of today's date, this is to document the substance of our discussions. As you know, I represent the business in Fargo known as Romantix. My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an "adult entertainment center" because: (1) It would have no sexually explicit "books, magazines or other periodicals" and therefore, would not fall under the definition of "adult bookstore"; (2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of "adult cinema"; and (3) It would have no live entertainment, and therefore, would not fall under the definition of "adult facility". The relevant portions of the Fargo Zoning Code can be found in Section 20-1202, which states:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade,

books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

3.

Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

4.

Adult Entertainment Facility: An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

5.

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

Brad Reich (Attorney for Romantix)
(303) 693-1348

From: [Nicole Crutchfield](#)
To: "[Joshua Porter](#)"
Subject: RE: Romantix Fargo
Date: Monday, August 29, 2022 3:18:33 PM

Yes, a little closer to 5:00 PM CST (my time) or later.

From: Joshua Porter <joshp721@gmail.com>
Sent: Monday, August 29, 2022 2:19 PM
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>
Subject: Re: Romantix Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hi Nicole,

Thank you for the confirmation.
Do you have time for a quick call this afternoon?

Regards,
Josh Porter
480 266 6888

On Mon, Aug 29, 2022 at 9:03 AM Nicole Crutchfield <ncrutchfield@fargond.gov> wrote:

Thanks Josh
I did get this. I will follow up.

From: Joshua Porter <joshp721@gmail.com>
Sent: Monday, August 29, 2022 9:55 AM
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>; Romantix <jporter@romantixexchange.com>
Subject: Romantix Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Nicole,

I am writing to you from my gmail account as we have been having significant issues emailing through my romantix account.

I would like to request the planning department's interpretation of "substantial or significant".
The code fails to define those terms and without an official interpretation from planning, the city has made it impossible for Romantix to determine compliance

with such a vague standard.

Please provide us with a "percentage" of "stock in trade" that planning considers "substantial or significant" to allow us an opportunity to amend our business plans and resubmit our application.

I've also done some additional research this weekend leading to a question about Enchantasys.

Enchantasys on 45th St. in Fargo is about 300 feet from Sickies Garage Burgers and Brew.

Sickies sells alcoholic beverages for on premises drinking. Clearly a zoning violation if Enchantasys is an adult bookstore.

If Enchantasys is not an adult bookstore then how are we being labeled as an adult bookstore?

It is possible Enchantasys was open before Sickies opened, I'm not certain.

However that location was an Old Chicago for many years before it became Sickies so the same question exists.

Thank you and I look forward to speaking with you later today.

Regards,

Josh Porter

480 266 6888

From: Josh Porter
Sent: Tuesday, August 23, 2022 4:06 PM
To: Mark Williams <mwilliams@fargond.gov>; ncrutchfield@fargond.gov
Cc: Mark Labertew <mlabertew@romantixexchange.com>
Subject: Fargo Romantix Review

Good afternoon Mark and Nicole,

Thank you for the call today. I am happy to provide any information you need. If this is insufficient please let me know what additional detail you need.

Below is an approximate use of the retail space at 74 Broadway.
The space is 3,500 sqft.

Approximate space given to each area:

Cash Wrap / Storage / Dressing Room:	600sf
Apparel / Lingerie / Shoes:	1350sf
Bath / Body:	200sf
Party / Games / Bachelorette:	170sf
Health Aids:	100sf
Sexual Wellness Items:	600sf (less than 20% of floor space)
Advertising / Signage / Mannequins:	480sf
Total:	3500sf

In the image below you can see the position of each department.

Dark lines are walls.

Orange Rectangles are gondolas

Gray Rectangle is a shoe display

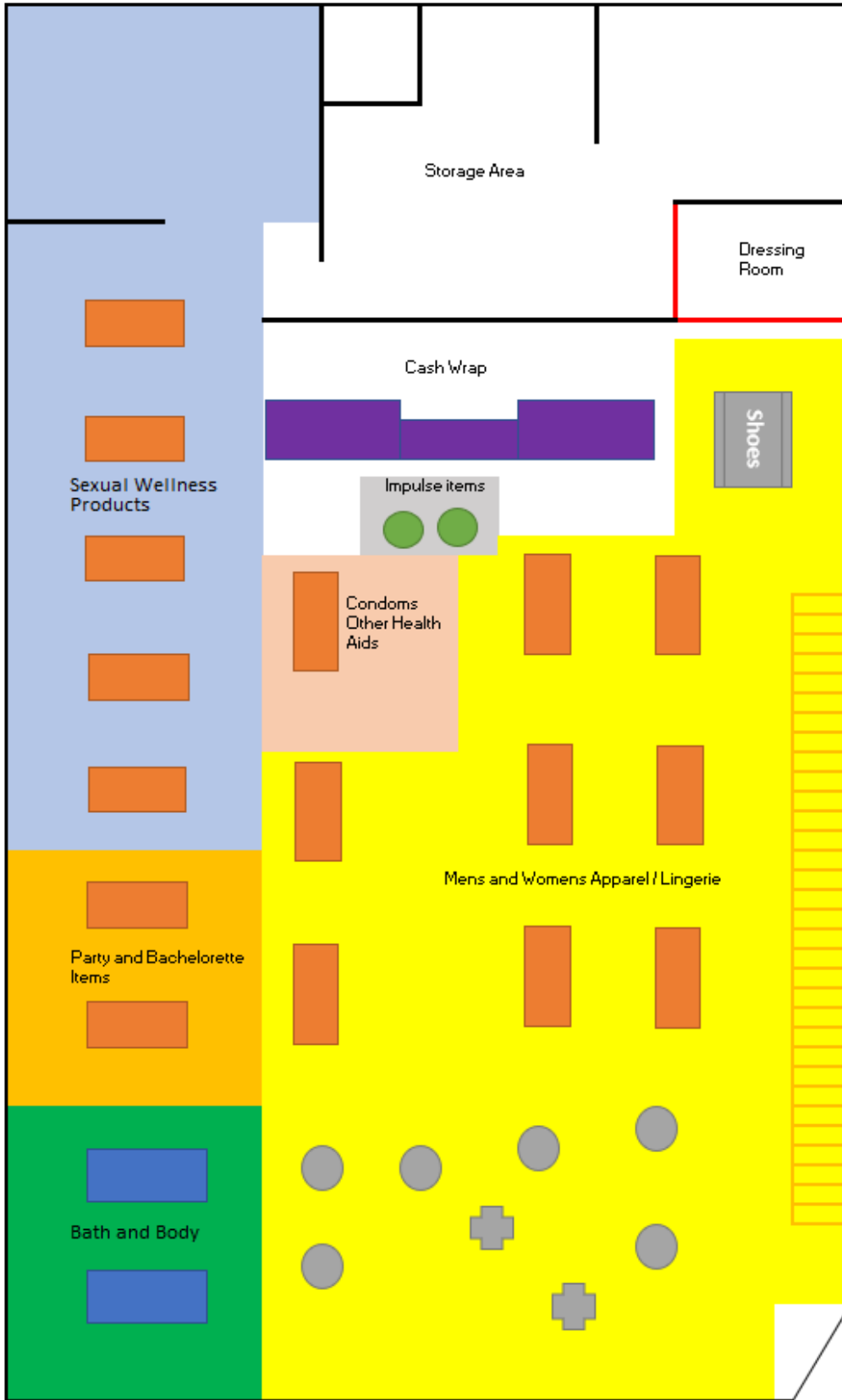
Blue Rectangles are Glass Cube displays

Gray Circles are hanging apparel fixtures

Orange lines on right side is an Outrigger Apparel Display

Green Circles are 4 tier bowl displays for impulse items

The highlighted colors signify what area of the store each category will be placed.



Windows Along the Front

Entrance

Inventory value is fluid and will fluctuate from time to time, however we will keep the value in these approximations:

Total Inventory Value at open 9/1: \$60,867

Apparel: \$16,445

Bath and Body: \$15,790

Games / Bachelorette: \$2,243

Novelties: \$7,177

Adult Novelties: \$17,686

Condoms / Health: \$1,526

No DVDs, No Magazines, No Media, No Viewing Areas, No Theaters of any kind.

The inventory mix will be very similar to the three Enchantasy stores in Fargo operating without any kind of SOB.

Per conversation with Nicole Crutchfield I am adding a definition of Novelty and Adult Novelty: Novelty: This category consists of items with no adult context. Innocuous packaging, standard items found in a multitude of other retailers. Examples include Pillows, Rope, Whipped Cream Dispensers, Furniture, Feathers, and Bed sheets.

Adult Novelty: This category consists of devices, and products with adult oriented packaging.

On June 10th our attorney reached out to the planning department with the following email breaking down our understanding of the code.

The planning department's response confirmed our interpretation later on June 10th.

Hello Mr. Kress.

As per your request, and in accordance with our telephone conversation of today's date, this is to document the substance of our discussions.

As you know, I represent the business in Fargo known as Romantix.

My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an "adult entertainment center" because:

(1) It would have no sexually explicit "books, magazines or other periodicals" and therefore, would not fall under the definition of "adult bookstore";

(2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of "adult cinema"; and

(3) It would have no live entertainment, and therefore, would not fall under the definition of "adult facility".

The relevant portions of the Fargo Zoning Code can be found in Section 20-1202, which states:

Adult Bookstore: *An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals*

that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

Adult Cinema: *An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.*

Adult Entertainment Facility: *An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.*

Adult Entertainment Center: *An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.*

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

*Brad Reich (Attorney for Romantix)
(303) 693-1348*

Donald Kress responded stating:

Brad,

74 Broadway is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retail sales and service, which is described in our Land Development Code (LDC) as:

6. Retail Sales and Service

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

LDC 20-1203.6

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

Thank you.

The products we are offering for sale, fall under sections a. and c. of this code. Consumer Goods, Clothing, Household Products, and Jewelry.

Webster's Definition of Consumer Goods, unless otherwise defined in the code is: Consumer good; in economics, **any tangible commodity produced and subsequently purchased to satisfy the current wants and perceived needs of the buyer.**

Based on the above interaction with the Fargo Planning Dept; we signed a 7 year lease for the space at 74 Broadway.

We have spent more than \$400,000 on improvements, travel, freight, furniture, and inventory for this store.

We received our sign permit on July 26.

We were issued a sales and Use Tax Permit on July 30.

We have been up front and open about our intentions the whole way through this process.

At no time in this process has anyone dissuaded us from moving forward.

Now one week from opening all of these questions come up???

I have attached several images of our stores interiors, and exteriors for your review.
As mentioned on our call, if it would appease the city and our neighbors, we are willing to place tint on the windows.

If you need any additional information please let me know.

I look forward to hearing from you soon.

Regards,



Josh Porter

Vice President of Operations
Progressive Retail Management

Office: 303-586-8472

Mobile: 480-266-6888

Fax: 888-235-6491

Email: jporter@romantixexchange.com

Website: <http://www.romantix.com>

Address: 4655 N Colorado Blvd Denver CO 80216

Confidentiality Notice: This email, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited.



 **PLAYTIME IS ANYTIME**


UNDRESSING ROOM







YOUR LOVE LIFE
IS OUR BUSINESS

MAKE TONIGHT
ALL ABOUT YOU



NEED HELP?
WE HAVE GREAT IDEAS!

PAIN PLEASURE





PAIN, PLEASURE
AND THE COMING IN BETWEEN

ASK A
#LOVEEXPERT

WHO DO YOU
WANT TO BE
TONIGHT?

FOLLOW YOUR
FANTASIES

GOING TO
BE A GREAT NIGHT!

LOVE LIFE
OUR BUSINESS

E LIFE
BUSINESS

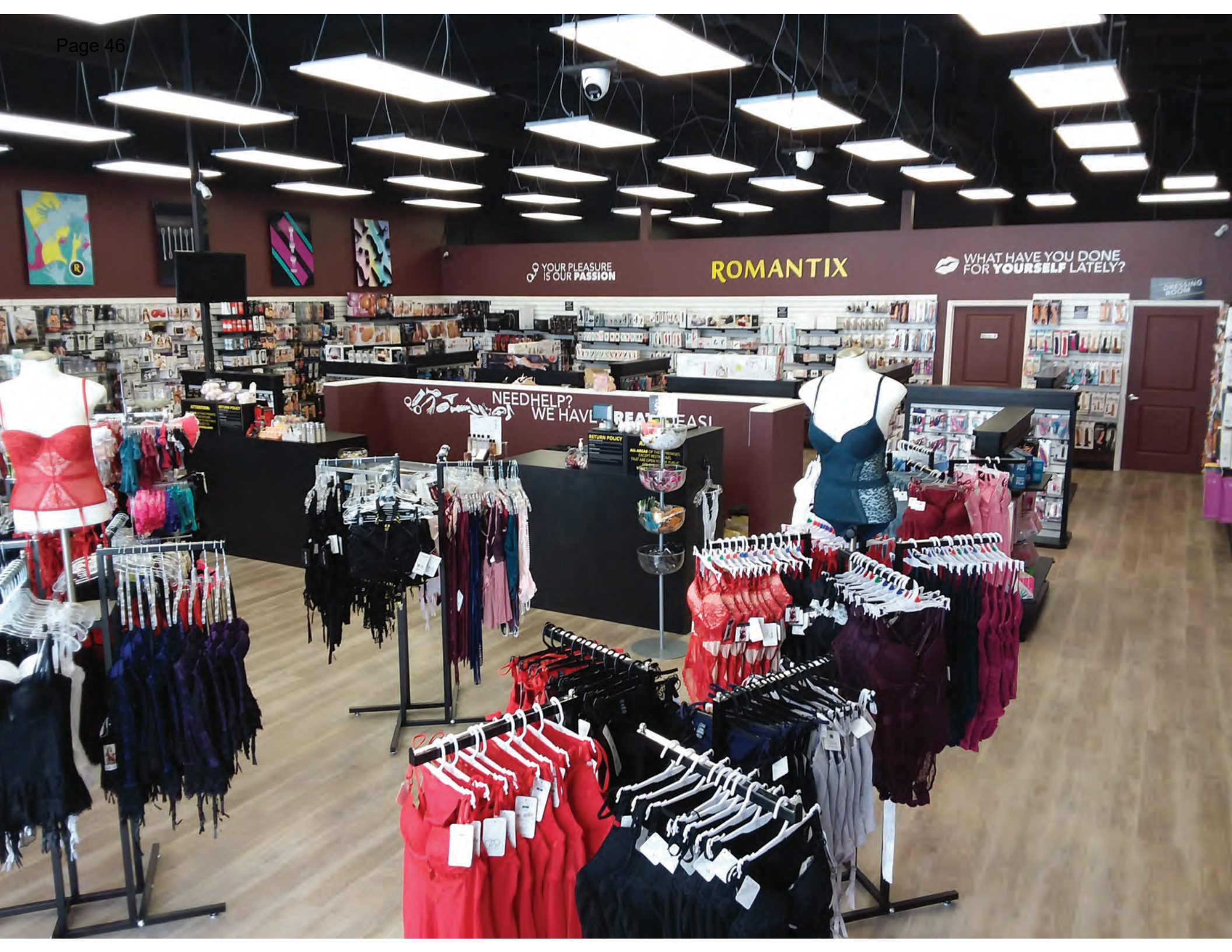
PLAYTIME
IS ANYTIME

MAKE TONIGHT
ALL ABOUT YOU

Shelves displaying various products, including Magic Wand vibrators and other adult toys.

Central display area featuring high-heeled shoes, lingerie, and boxes of Nippon Foot Sox. Includes an attention sign: **ATTENTION: SHOPLIFTING IS A CRIME. OFFENDERS WILL BE PROSECUTED.**

Shelves displaying packaged underwear and lingerie, including brands like Beverly Hills and Curve.



YOUR PLEASURE IS OUR PASSION

ROMANTIX

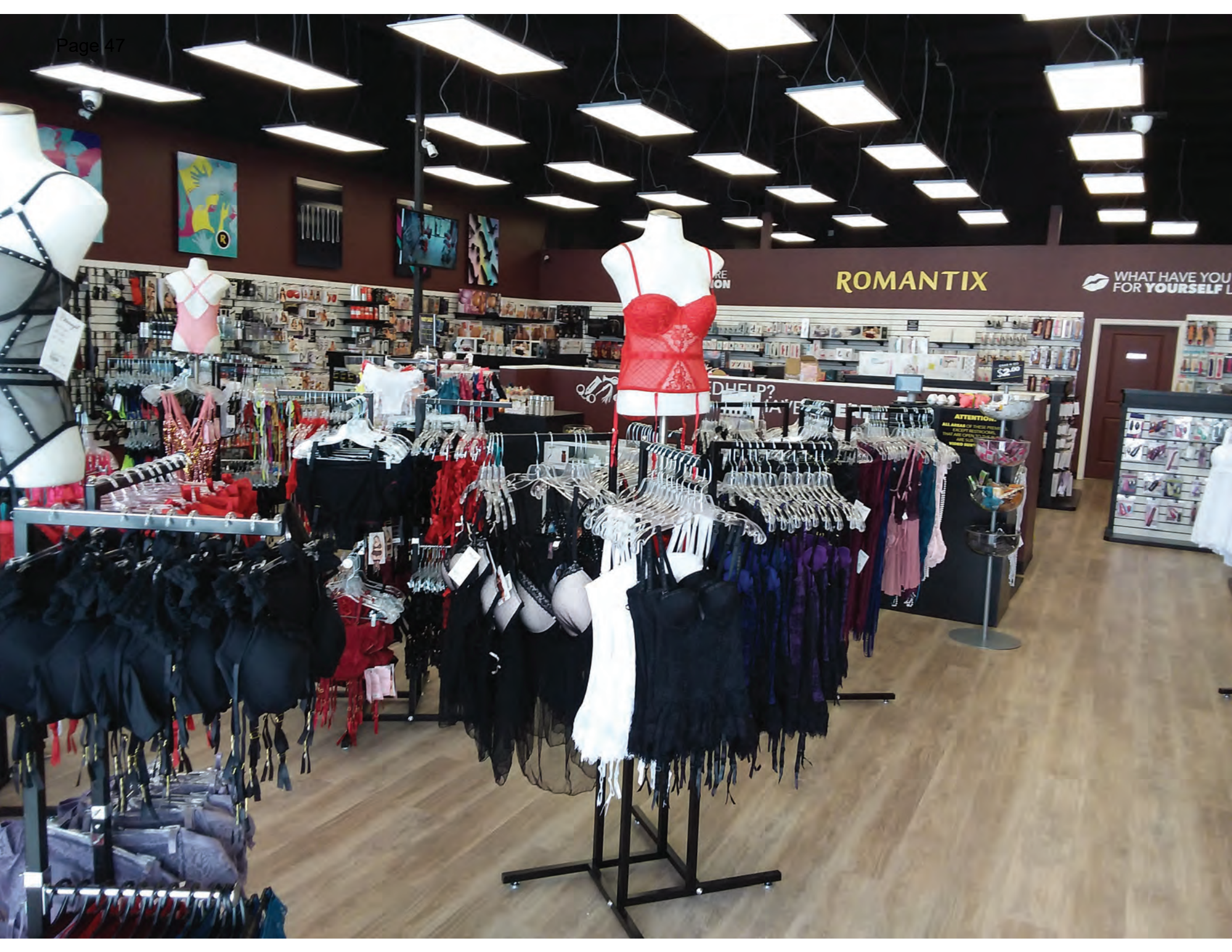
WHAT HAVE YOU DONE FOR YOURSELF LATELY?

NEED HELP? WE HAVE GREAT DEALS!

RETURN POLICY

ALL ITEMS OF THE ROMANTIX BRAND THAT ARE OPEN TO THE PUBLIC

DRESSING ROOM



ROMANTIX

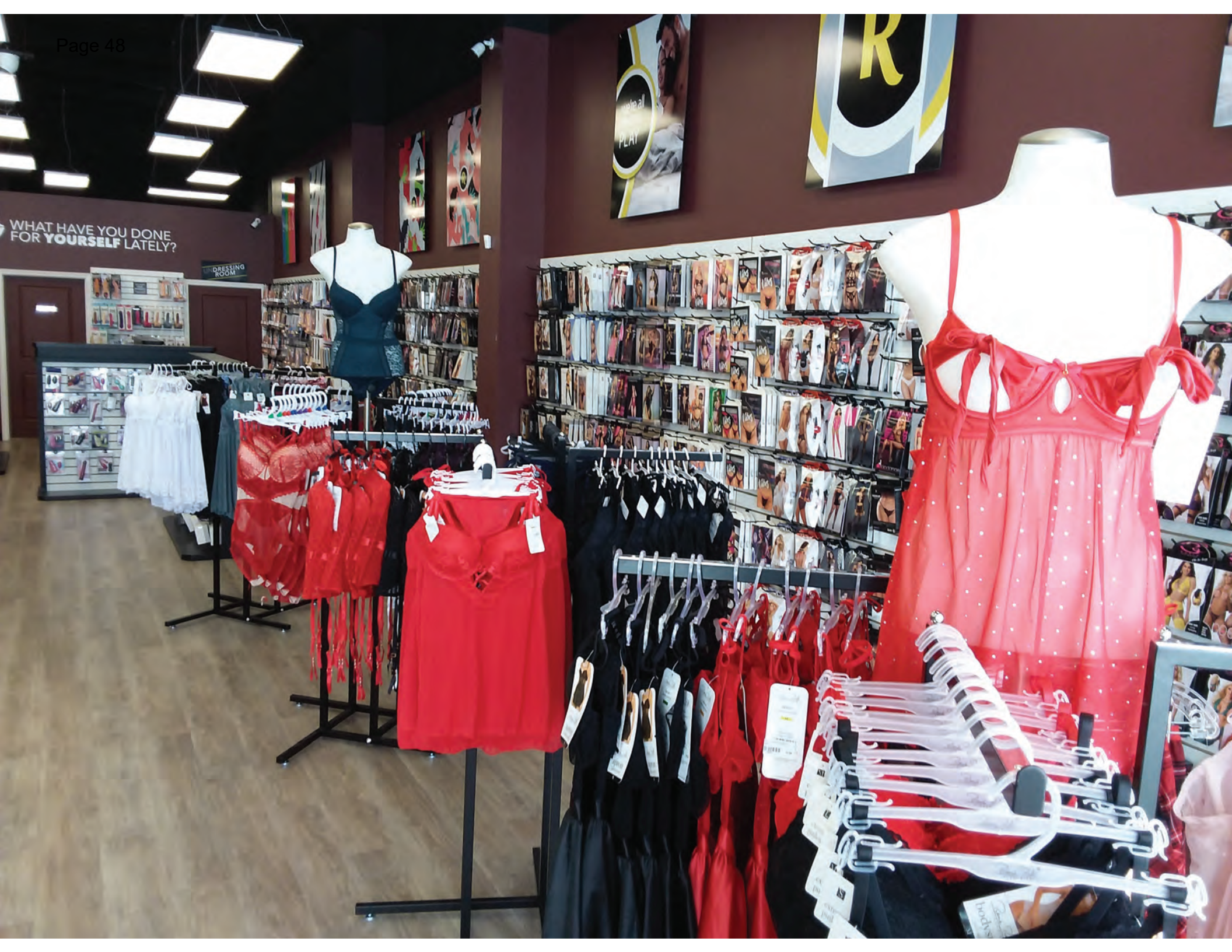
WHAT HAVE YOU FOR YOURSELF L

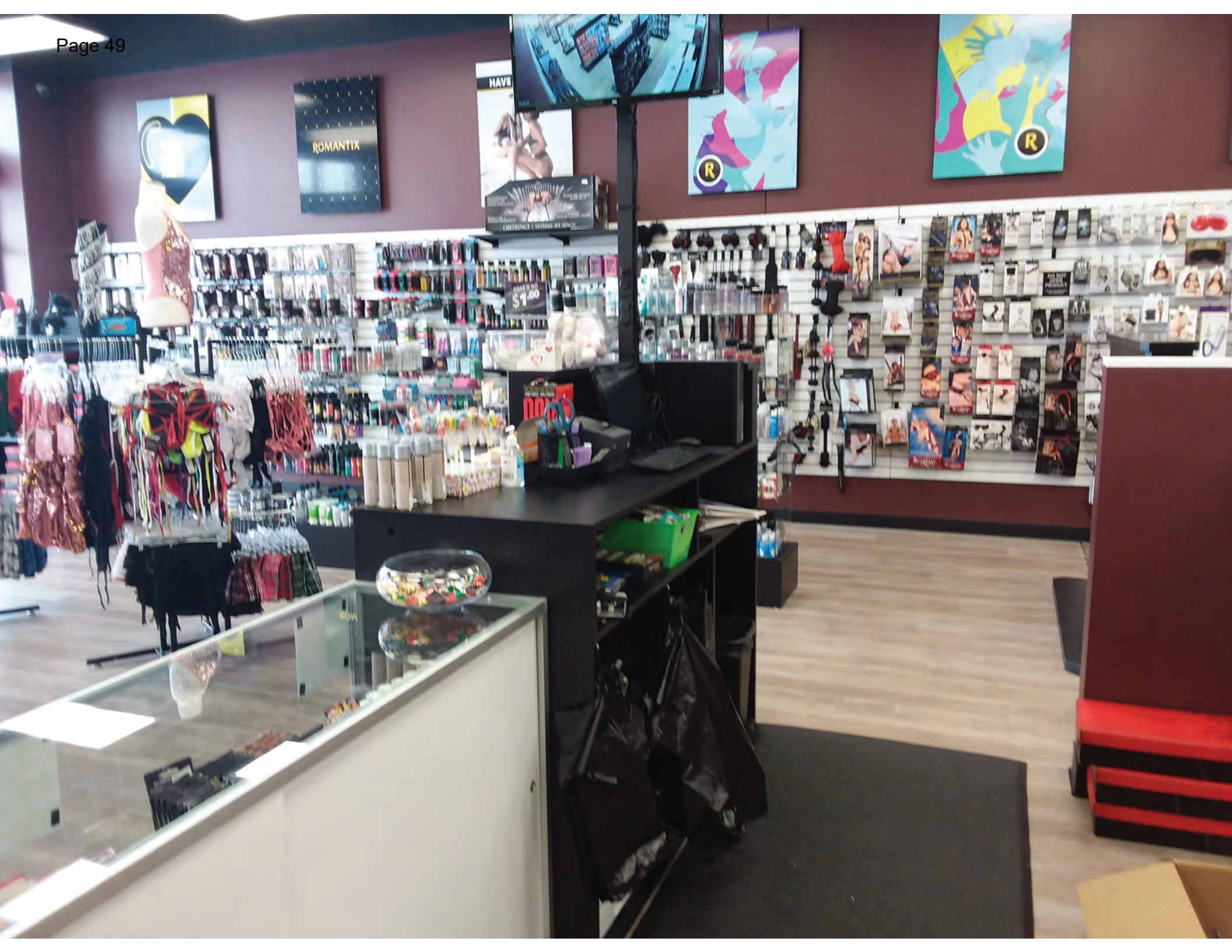
NEED HELP?

ATTENTION:
ALL AREAS OF THESE ITEMS
EXCEPT BUSTLINE,
THIGHS AND OPENINGS
ARE OPEN TO BE USED
AS YOU SEE FIT

WHAT HAVE YOU DONE
FOR YOURSELF LATELY?

DRESSING ROOM







IT'S GOING TO BE A GREAT NIGHT!



R

WHAT HAVE
YOU DONE
FOR **YOURSELF**
LATELY?

ROMANTIX





PLAYTIME
IS ANYTIME







YOUR PLEASURE
IS OUR PASSION

ROMANTIX

PLAYTIME
IS ANYTIME

EXIT



ROMANTIX

PLAYTIME IS ANYTIME

PANTY SALE!
BUY 3 GET 1
FREE!

EXIT

DRESSING ROOM

RETURN POLICY

100% COTTON
PANTY (SIZES 34-42)





YOUR PLEASURE
IS OUR PASSION

ROMANTIX

PLAYTIME
IS ANYTIME

EXIT



YOUR LOVE LIFE
IS OUR BUSINESS

WHO DO YOU
WANT TO BE
TONIGHT?

ROMANTIX

YOUR PLEASURE
IS OUR PASSION

PAIN, PLEASURE
AND EVERYTHING IN BETWEEN

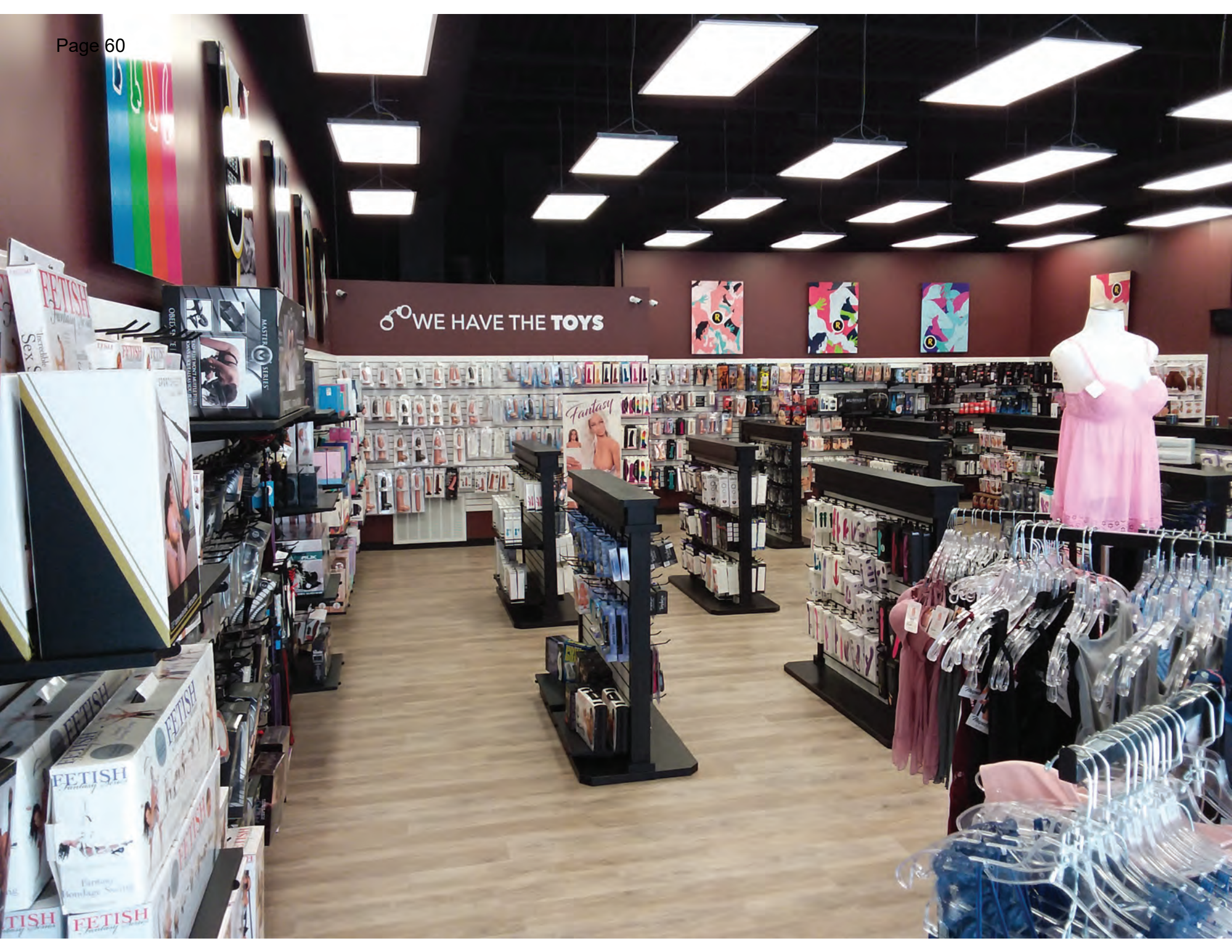
R

MAKE TONIGHT
ALL ABOUT YOU

WHAT HAVE YOU DONE
FOR YOURSELF LATELY







♂ WE HAVE THE TOYS

Fantasy

FETISH
Fantasy Series

FETISH
Fantasy Series



YOUR PLEASURE IS OUR PASSION

ROM

GREAT NIGHT

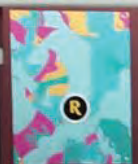




ROMANTIX

PANTY SALE!
BUY 3 GET 1
FREE!

35%
DYNAMO
DELAY





September 7, 2022

Josh Porter
Romantix, Inc.
4655 Colorado Blvd
Denver, CO 80216-3217

Gill's Investment LTD
2435 Parkview Dr. S
Fargo ND, 58104

RE: Change of Use Permit for 74 Broadway, Romantix Inc.

Dear Mr. Gill and Mr. Porter,

The Change of Use Permit application that was filed by Gill Investments LTD on August 15th, 2022 was denied by the Planning Department. The proposed use does not meet the Downtown Mixed Use Zoning Use Regulations as defined by the Land Development Code, Article 20-04 (20-0401 Use Table); and Article 20-12.

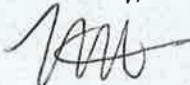
An Adult Bookstore is defined in Fargo Municipal Code § 20-1202. Based on the application and additional information provided for consideration of the application, including product and sales information, store layout, admission limited to persons 18 years of age and older, as well as other relevant information, I made the decision that the definition of Adult Bookstore "stock in trade" applies to the use, and that the primary business purpose consisting of adult products is substantial or significant. The City does not employ a numerical percentage, but rather I took the totality of the circumstances into account. Therefore, the use is precluded by the Use standards provided in the ordinance, and as the Zoning Administrator I denied the proposed use at 74 Broadway.

If you wish to appeal this decision, please submit your notice of appeal by using the attached application form submitted to the Planning Department within 10 days of this notice to you but no later than September 20, 2022. The form can also be downloaded from here:

https://download.fargond.gov/1/application_appeal_of_administrative_decision_2018.pdf

The Board of Adjustment will hear your appeal on September 27th at 9:00 AM. Please let us know if you have any questions.

Sincerely,



Nicole Crutchfield, AICP
Planning Director



cc: Nancy Morris, City Attorney
Shawn Ouradnik, Inspections Director



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 (<i>printed</i>): _____
Address: _____ _____
Primary Phone: _____
Alternative Phone: _____
Fax: _____
Email: _____

Representation Information (<i>if applicable</i>)
Name (<i>printed</i>): _____
Address: _____
Company _____
Primary Phone: _____
Alternative Phone: _____
Fax: _____
Email: _____
<input type="checkbox"/> Same as property owner

Location of property involved in the appealed decision (<i>if applicable</i>)
Address: _____
Legal Description (<i>attach separate sheet if more space is needed</i>): _____ _____

Item for Appeal (<i>attach separate sheet if more space is needed</i>)
_____ _____

Reason for Appeal (<i>attach separate sheet if more space is needed</i>)
_____ _____ _____ _____ _____ _____ _____



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*): _____ Date: _____

Representative (*Signature*): _____ Date: _____

Office Use Only

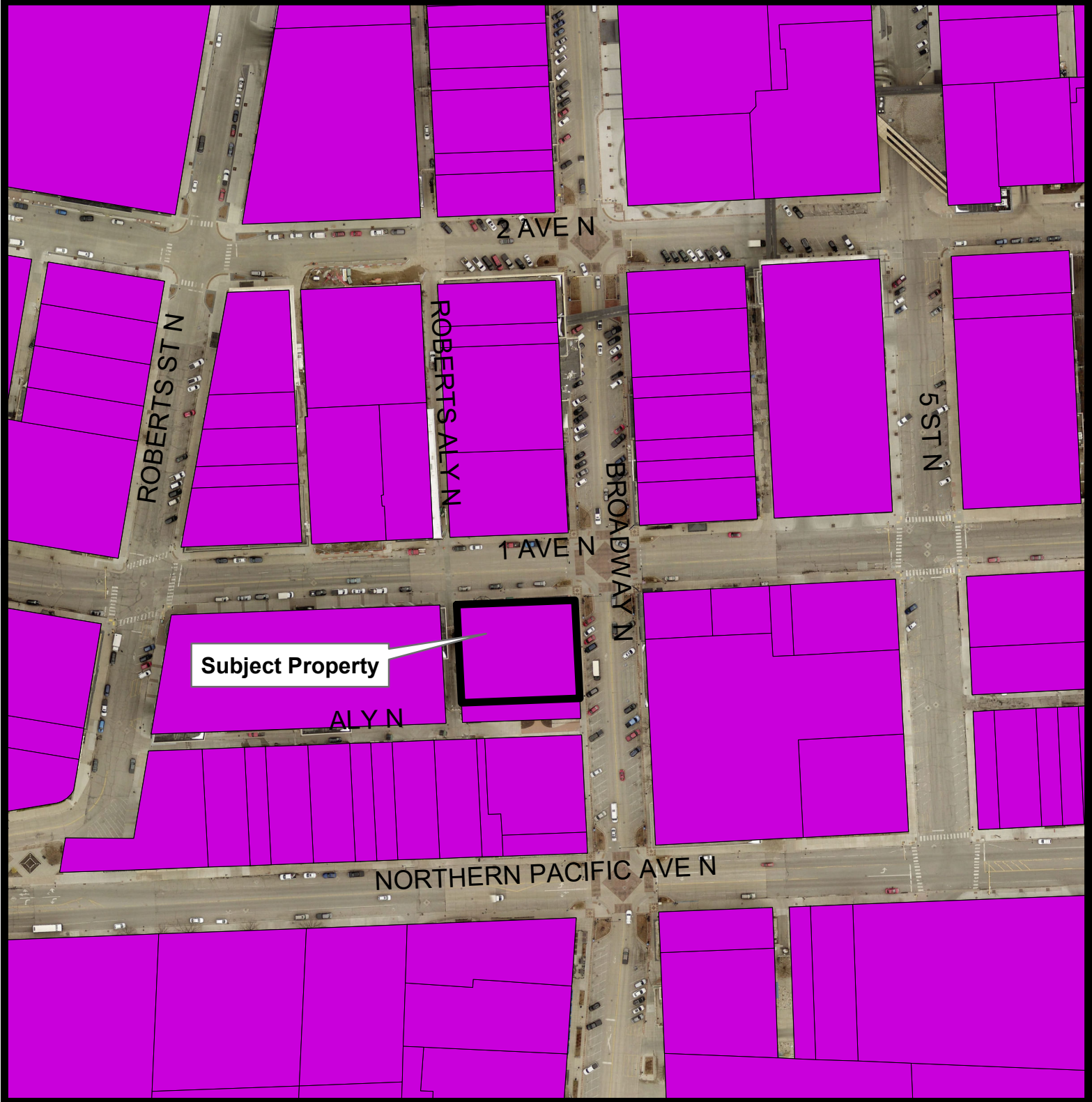
Date Filed: _____ Pre-Application Meeting Date: _____

Application Complete: Yes No Reviewed By: _____

Board of Adjustment

Appeal of an Administrative Decision

Zoning Map



Legend

AG	DMU	GC	GL	GO	LC	LI	MR-1	MR-2	MR-3	MHP	NC	NO	P/I	UMU	SR-2	SR-3	SR-4	SR-5	City Limits
----	-----	----	----	----	----	----	------	------	------	-----	----	----	-----	-----	------	------	------	------	-------------



Appeal of an Administrative Decision

Aerial Map



General Information

Segment Id: 1
 Owner 1: GILL'S INVESTMENT LTD
 Owner 2:
 Property Address: 66 BROADWAY N
 Mailing Address: 2435 PARKVIEW DR S FARGO, ND 58104
 Addition Name: Roberts
 Block: 1
 Lot: N 4 2/3 FT OF 22 & ALL OF 23 THRU 26

Additional Description:

*02/23/88 SPL/FR 2381-01700 & 2381-01950

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 44 or higher.
 Structure may be affected by an approximate flood stage of 44 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: 1
 Elem. School District: Roosevelt

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$212,000.00	\$3,117,900.00	\$3,329,900.00

Building Information

Year Built: 1893
 Total Building SqFt: 34478
 No. of Apartment Units:
 Residential Story Height: ()

Lot Size

Front Width: 116.67
 Back Width: 116.67
 Depth Side 1: 140.00
 Depth Side 2: 140.00
 Land Use: C (Commercial)
 Property Type: 75 (Retail, Off, & Apartments)
 Square Footage: 16334.00

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.

Zone 1: DMU

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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General Information

Segment Id: 2
 Owner 1: GILL'S INVESTMENT LTD
 Owner 2:
 Property Address: 68 BROADWAY N
 Mailing Address: 2435 PARKVIEW DR S FARGO, ND 58104
 Addition Name: Roberts
 Block: 1
 Lot: N 4 2/3 FT OF 22 & ALL OF 23 THRU 26

Additional Description:

*02/23/88 SPL/FR 2381-01700 & 2381-01950

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 44 or higher.
 Structure may be affected by an approximate flood stage of 44 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: 1
 Elem. School District: Roosevelt

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$0.00	\$0.00	\$0.00

Building Information

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

Lot Size

Front Width: 0.00 Land Use: C (Commercial)
 Back Width: 0.00 Property Type: 95 (Address Segment)
 Depth Side 1: 0.00
 Depth Side 2: 0.00 Square Footage: #Error

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Zone 1: DMU

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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September 7, 2022

City of Fargo Planning Department Synopsis

Subject: Change of use permit information for Romantix, Inc. at 74 Broadway

The information below provides a synopsis of the Planning Department's determination to deny the request for a change of use permit requested for the location of 74 Broadway.

Background: Prior to the application for a Change of Use Permit, the owner of 74 Broadway applied for a sign permit at the Inspections Department. As part of the process of applying for the sign permit, city officials were informed about Romantix's interest in relocating the store located at their current address on NP Avenue to 74 Broadway.

The owner of 74 Broadway was notified that a change of use permit was required by the Inspections Department. Thereafter, the owner of 74 Broadway submitted an application for a change of use permit.

Zoning and Land Use Review timeline pertinent to the Change of Use Permit application:

8/15/22 - Change of Use Permit Application (Building Permit) was received and routed for Change of Use at 74 Broadway to occupy the tenant space as Retail in the Downtown Mixed Use. The Establishment name is Romantix, Inc. The owner of the building is Gill's Investments LTD.

08/18/22 – 08/26/22 – City staff reached out to store representative of Romantix to inquire for more information about business operations to determine the proper use designation for Romantix's proposed business at 74 Broadway. Phone call discussions between Planning Department staff and business owner's representative occurred.

08/26/22 - Planning Department, under the powers of the Zoning Administrator, denied the application for a change of use permit after interviews with business representative. Denial of permit is based on the Zoning Administrator's interpretation that the proposed use is classified as an Adult Bookstore in lieu of Retail Sales when reviewing the application against the definitions in the Land Development Code. Per Use Table, Section 20-0401, this use is not allowed. Definitions of uses can be found in Section 20-1202.

On this same day, a business representative was notified by telephone that the permit is denied by the Zoning Administrator. On the telephone call, the owner representative challenged the Zoning Administrator's opinion and argued that Romantix's proposed business at 74 Broadway did not constitute an adult bookstore under the Fargo Municipal Code. Planning Department involved legal counsel and notified the City Commission of the determination to deny the application for the change of use permit and of Romantix's potential legal challenge.

08/31/22 – Executive Session was held with City Commission

Status of situation:

Building owner (applicant) was notified on 08/26/22 of the denial of the application for the change of use permit and was notified formally in writing on 09/07/22. The building owner or Romantix can appeal the decision to deny the change of use permit. Article 20-09 provides for the appeal process. The appointed body to review the denial of permit appeal is Board of Adjustment (BOA). If owner chooses to appeal, the next potential date for the appeal review is September 27th. The BOA decision can be appealed to City Commission.

Technical Memo

TO: Board of City Commissioners

FROM: Nicole Crutchfield, Planning Director 

DATE: August 25, 2022

RE: Adult Uses in DMU, Downtown Mixed Use Zoning

Commissioners, this memo is to inform you of my findings on the Change of Use Permit requested for the business of Romantix, requested to be located at 74 Broadway.

Although the business operator has indicated that the current operation located at 417 NP Ave, will cease and the business model for the intended location will change to meet the land use classification of retail sales and service, I determined further investigation was necessary to ensure code compliance. Specifically, the issue presented for decision is whether the intended use is permitted by Fargo Municipal Code § 20-0402 (A)- Use Standards, and the applicable definitions (2), (3), (4), (5), (59) and (60).

Through the permit review process staff interviewed the applicant's representative, reviewed photos of similar stores, investigated the business on-line presence, and sought additional information from the applicant, including inventory categories, store layout and percentage of sales information. After careful consideration of the facts and application to the Ordinance, it appears the operation is adult oriented and falls into definitions of regulated activity, such that Article 20-04 applies.

As Zoning Administrator I have denied the change of use permit prior to the applicant commencing business; the applicant advises it intends to open the new store in the coming days. The applicant may appeal this finding to the Board of Adjustment and Planning Commission, depending on the basis for the appeal, with the final decision resting with the City Commission. It is my position that the application of the Ordinance provisions, the Downtown InFocus plan, Renaissance Zone plan, and investments in Downtown further weigh in favor of this finding. Due to the nature of downtown being a neighborhood as well as entertainment area and business area, there is an additional layer of compatibility related to land uses as it relates to potential nuisances and surrounding impacts.

Please don't hesitate to reach out any time with questions or concerns. My direct office 297-7782 or cell 715-0331.



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 A BOARD OF ADJUSTMENT DECISION

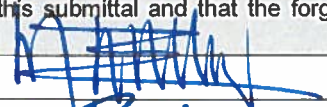

We, the undersigned, do hereby petition the Board of City Commissioners of the City of Fargo, North Dakota, to hear and decide an appeal of a decision or determination made by the Board of Adjustment of the City of Fargo.

Property Owner Information
Name (<i>printed</i>): <u>Romantix-Fargo, Inc. (Leasee)</u>
Address: <u>4655 N. Colorado Blvd</u>
Primary Phone: <u>Contact via Counsel</u>
Alternative Phone: _____
Fax: _____
Email: _____

Representation Information (<i>if applicable</i>)
Name (<i>printed</i>): <u>Ben Williams</u>
Address: <u>1213 NP Avenue, Fargo, ND</u>
Primary Phone: <u>701-478-4900</u>
Alternative Phone: _____
Fax: <u>701-478-4330</u>
Email: <u>Ben@KennellyBusinessLaw.com</u>

Location of property involved in the appealed decision (<i>if applicable</i>)
Address: <u>74 Broadway N, Fargo, ND</u>
Legal Description (<i>attach separate sheet if more space is needed</i>): _____
<u>*02/23/88 SPL/FR 2381-01700&2381-01950</u>

Reason for Appeal (<i>attach separate sheet if more space is needed</i>)
<u>See Attachment</u>

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 (<i>Signature</i>): 	Date: <u>10/6/22</u>
Representative (<i>Signature</i>): 	Date: <u>10/6/22</u>

Office Use Only
Date Filed: _____ Pre-Application Meeting Date: _____
Application Complete: <input type="checkbox"/> Yes <input type="checkbox"/> No Reviewed By: _____

October 6, 2022

VIA EMAIL TO Planning@FargoND.gov

The City of Fargo
Planning and Development
225 4th Street North
Fargo, ND 58102
T: 701-241-1474
E: Planning@FargoND.gov

Re: 74 Broadway N; Permit No. 2208-0570-COU
Attachment to Appeal of a Board of Adjustment Decision

Dear Board of Adjustments:

This firm, in association with Ben Williams of Kennelly Business Law in Fargo, North Dakota, represents Romantix-Fargo, Inc. with respect to the present Appeal of a Board of Adjustment Decision. This document serves as an attachment to the “Appeal of a Board of Adjustment Decision” submitted contemporaneously herewith.

Gill’s Investment LTD originally applied for a Change of Use Permit for 74 Broadway N, Fargo, North Dakota (the “Property”) on or about August 15, 2022, and paid all necessary fees then due. Romantix-Fargo, Inc. (hereafter simply “Romantix-Fargo”), has leased and is the current occupant of the Property. The “LAMA Permit Summary” available on the City of Fargo, North Dakota’s website identifies the aforementioned request as “Permit Number: 2208-0570-COU.”

The permit was denied for the reasons stated in Planning Director Nicole Crutchfield’s letter of September 7, 2022 to Josh Porter of Romantix, Inc., and Gill’s Investment LTD.. As the lessee who intends to operate a retail establishment on the property, Romantix-Fargo appealed the change of use application’s denial as an aggrieved party pursuant to Fargo Municipal Code (“FMC”) § 20-0916. On September 27, 2022, the Board of Adjustment voted to affirm the Planning Director’s administrative decision. Romantix-Fargo now appeals the Board of Adjustments decision pursuant to FMC § 20-0916(I).

The Planning Director’s decision to deny the requested change of use and the Board of Adjustment’s decision to affirm are in error because the Property is appropriately zoned for retail use and because Romantix-Fargo’s intended retail operation would not be an Adult Bookstore within the meaning FMC § 20-1202(2). Thus, Romantix-Fargo’s is *not* precluded from operating

in the DMU, Downtown Mixed-Use District. In addition to being unsupported by the FMC, the denial is an ongoing violation of Romantix-Fargo's First and Fourteen Amendment rights, which continues to cause it to incur substantial damages.

RELEVANT MUNICIPAL PROVISIONS

Fargo's Land Development Code is set forth in Chapter 20 of the Fargo Municipal Code. The relevant sections thereof are set forth below:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

[FMC § 20-1202(2)].

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

[FMC § 20-1202(5)].

Specified Anatomical Areas:

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola;and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

[FMC § 20-1202(59)].

Specified Sexual Activities:

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy; and
- c. Fondling of human genitals, pubic region, buttock or female breast.

[FMC § 20-1202(60)].

The Property is located in a DMU district. FMC § 20-0212(B) states that “[u]ses are allowed in the DMU district in accordance with the Use Table of Sec. 20-0401.” [FMC § 20-0212 – DMU, Downtown Mixed Use District].

This table is an intersection of uses and districts with categories and types of uses listed in the rows and districts arranged in the columns. The intersection of “Retail Sales and Service” and the “DMU” district is marked by a “P.” According to FMC 20-0401(B) (entitled “P Uses Permitted By-Right”): “A ‘P’ indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.”

[FMC § 20-0401 – Use Table].

“Retail Sales and Service” is defined in FMC § 20-1203(D)(6):

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

(2) Personal Service-Oriented:

Branch banks; emergency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; and animal grooming.

(3) Entertainment-Oriented:

Restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days.

(4) Repair-Oriented:

Repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

[FMC § 20-1203 – Use Categories].

BACKGROUND

The operators of Romantix-Fargo and its separately incorporated sister stores have gone to great lengths to ensure the proposed operation at the Property would *not* meet the definition of an adult bookstore as defined in FMC § 20-1202(2). Romantix-Fargo has further stated that it would adjust its inventory to ensure compliance with the Land Development Code.

Back on February 22, 2019, attorney for Romantix-Fargo Bradley J. Reich spoke with Kylie Bagley, then a planner with the City of Fargo, regarding the Romantix store at 417 Northern Pacific Avenue and the Sam & Delilah's at 1015 38th Street North. Mr. Reich confirmed the substance of his and Ms. Bagley's conversation via an e-mail addressed to Ms. Bagley, a copy of which is attached hereto as **Exhibit 1**. As **Ex. 1** recounts, the owner of those businesses was proposing to "build an 'adult bookstore', 'adult arcade' and 'adult theater'" adjacent to Sam & Delilah's. Although Sam & Delilah's was located in a district permitting adult entertainment centers, use standards prohibited an adult entertainment center from being located within 1,250 feet of another adult entertainment center. FMC §§ 20-1202(5), 20-0402(A)(3). Mr. Reich confirmed with Ms. Bagley that so long as Sam & Delilah's removed its "sexually oriented 'books, magazines, and other periodicals' . . . it would not constitute an 'adult bookstore' as that term is defined in Section 20-1202 of the [FMC]." It was understood that Sam & Delilah's would continue to sell adult-oriented devices, products and novelties, just like the product mix Romantix-Fargo proposes to sell.

On February 27, 2019, Mr. Reich spoke with Ms. Bagley by telephone. Ms. Bagley indicated that the whole planning department had a meeting that morning to make sure everyone was on the same page regarding the Sam & Delilah's proposal. Everyone in the planning department agreed that, as proposed, Sam & Delilah's would not meet the definition of an Adult Bookstore.

On March 5, 2019, Ms. Bagley indeed confirmed: "Based on what you have previously described in your emails the planning department does not see an issue with zoning if the new adult bookstore, adult arcade and adult theater were to be placed at 1015 38 St N at this time." This email along with prior emails in that direct chain are attached as **Exhibit 2**.

Attorney Reich's forthright communications with the City culminated with a June 16, 2021, zoning confirmation letter, attached hereto as **Exhibit 3**, regarding the 1055 38th Street North property. That letter begins by stating: "The undersigned certifies that the information contained in this letter is accurate based on or relating to the information supplied[.]" That letter then plainly confirms:

Based on the attached letter from 2019, it is assumed that Sam & Delilah's that is to the south of the subject property would remove most of the sexually oriented "books, magazines and other periodicals" which would no longer constitute Sam & Delilah's as an adult bookstore. Therefore the spacing requirement for the proposed Romantix location at 1055 38th Street North would be met.

Ex. 3, at p. 1.

The letter referenced in **Ex. 3**, which is also included as p. 3 of the same, is identical to the email attached as **Ex. 1**.

Ultimately, the 1015 38th Street North project did not come to fruition. The operators are still contemplating closing the store at 417 Northern Pacific Avenue; however, that option will not become available until a new store is open to the public.

Like the previous project, Romantix-Fargo's plans to operate at the Property began with its operators reaching out to the City of Fargo. Attorney Reich connected with Planning Coordinator Donald Kress and explained that Romantix-Fargo was pursuing opening a store at the Property. He explained that the store would not carry sexually explicit books, magazines, or periodicals; thus, he believed that it would be classified as a Retail Sales and Service establishment permitted by-right in the DMU district.

Attorney Reich confirmed his conversation with Mr. Kress in an email dated June 10, 2022, a copy of which is attached hereto as **Exhibit 4** (multiple emails). Mr. Kress confirmed that Retail Sales and Service were permitted in the DMU district, but "Adult uses" were not. Mr. Reich replied:

Thank you for your response! I appreciate it. As I read your email, you agree with my interpretation of the code, and as such, Romantix would be allowed to open their proposed business at that location, assuming they have no live entertainment (adult facility); no arcade or theater (adult cinema) and no sexually explicit books magazines or other periodicals (adult bookstore). Thank you again for your prompt attention to this matter!

Ex. 4, at p.1. Mr. Kress did not provide any further response.

On or about August 15, 2022, Gill's Investment, LTD applied for a Change of Use Permit as the owner of the Property. The application sought to change the use classification for the Property to Retail Sales and Service, which is permitted as a by-right use in the DMU.

To avoid any confusion, that same day, Josh Porter reached out to Assistant Planning Director Mark Williams. After speaking with Mr. Williams by phone, Mr. Porter forwarded to Mr. Williams a copy of Mr. Reich's June 10, 2022, email correspondence with Mr. Kress. *See Exhibit 5* hereto.

Moments before forwarding the email referenced above to Mr. Williams, Mr. Porter had followed up with Mr. Williams and provided a general description of the anticipated retail store at the Property. *See Exhibit 6* hereto. Mr. Porter was clear that the anticipated store at the Property "will have no adult DVDs, Arcades, or Theatres." **Ex. 6**, at p. 1. On August 18, 2022, Mr. Porter attended a zoom conference with Mr. Williams and Mayor Tim Mahoney. Mr. Porter, again, confirmed that the store would offer, "no magazines, no DVDs, no services of any kind." Mayor Mahoney asked Mr. Porter to make arrangements with the Downtown Business Partnership, so that he could address concerns that the store would be like the "ABC Bookstore," referencing the Romantix at 417 Northern Pacific Avenue that operates as an Adult Bookstore and Adult Cinema. That was the only "problem" identified at the meeting.

On August 22, 2022, Romantix-Fargo learned from its landlord that there was an apparent issue with its change of use. *See Exhibit 7*. On August 23, 2022, Mr. Porter followed up with Mr. Williams and provided a detailed description of the store. *See Exhibit 8*. Mr. Porter again emphasized that the store's inventory would include "No DVDs, No Magazines, No Media," and compared the inventory mix with the three Enchantasys stores that Fargo does not regard as Adult Bookstores. **Ex. 8**, at p. 3. Mr. Porter supplied Mr. Williams with approximately 25 photographs from a similar store further confirming that the operation would *not* be an Adult Bookstore. **Ex. 8**, at pp. 7-31.

Shortly thereafter, Mr. Williams and Ms. Crutchfield called Mr. Porter and from there forward, Ms. Crutchfield became the City's primary point of contact with regard to Romantix-Fargo's proposed use of the Property.

On August 29, 2022, Mr. Porter reached out to the Director of Planning & Development, Nicole Crutchfield. *See Exhibit 9.* He requested clarification on how the City interpreted “substantial or significant” so that Romantix-Fargo could amend its business plans and resubmit the application. No such clarification was provided.

Instead, on September 7, 2022, Nicole Crutchfield issued a letter to Josh Porter and Gill’s Investment LTD denying the requested change of use application. This “Denial Letter” is attached hereto as **Exhibit 10**. The letter provided the following less-than-helpful explanation:

Based on the application and additional information provided for consideration of the application, including product and sales information, store layout, admission limited to persons 18 years of age and older, as well as other relevant information, I made the decision that the definition of Adult Bookstore “stock in trade” applies to the use, and that the primary business purposes consisting of adult products is substantial or significant.

Ex. 10, at p. 1.

On September 27, Romantix-Fargo’s appeal of the Planning Director’s decision to deny was heard by the Board of Adjustment. After presentations on behalf of Planning & Development and Romantix-Fargo, with both responding to inquiries by board members, the Board of Adjustments voted 4-1 to affirm the decision of the Planning Director.

The present appeal of the Board of Adjustment’s decision to affirm the Planning Director’s denial of the change of use application now follows.

ANALYSIS

The Planning Director’s (hereafter, the “Director”) decision to deny the application for a change of use is contrary to the plain language of the City of Fargo’s Land Development Code, it is contrary to Fargo’s longstanding application of the definition of an “Adult Bookstore,” and it is contrary to Romantix-Fargo’s rights under the First and Fourteenth Amendments to the United States Constitution. The denial is no more than a political decision designed to appease existing business in the area. It appears that neighboring businesses are operating under the impression that Romantix-Fargo’s proposed business at the Property would be similar to the operation at 417 Northern Pacific Avenue.

To be clear, Romantix-Fargo’s proposed operation at the Property is designed to conform to the Land Use Code. The product mix will not include any, and certainly not a substantial or significant amount, of products that would bring the operation within the definition of an Adult Bookstore. Romantix-Fargo is specifically excluding books, magazines, and other periodicals for this purpose. Neither the Romantix website nor the 417 Northern Pacific Avenue store provide an appropriate representation of the proposed business.

The Denial Letter, **Ex. 10**, uses general terms and concepts to explain the result. It does not identify so much as a single item the Planning Director identified as an “Adult Product.” The focus on the phrase “stock in trade” indicates that the Planning Director is referring to items that are *not* books, magazines, or periodicals. After all, Romantix-Fargo had made clear that it will carry *no* such items. The language in FMC § 20-1202(2), however, simply does not allow for such a novel interpretation.

1. The Director misapplies the phrase “stock-in-trade.”

As reproduced above, an establishment only becomes an Adult Bookstore when it has “as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.” FMC § 20-1202(2). These words, of course, having meaning.

There is no indication in Fargo’s Land Development Code that the phrase “stock in trade” means something completely different than the terms that follow, “books, magazines, and other periodicals,” such that the phrase can be applied to something other than those printed materials. First, a natural reading of the phrase is that it identifies what a bookstore’s stock-in-trade is; namely, books, magazines, and periodicals. The phrase is an opening to the list; not a part of the three-noun list. A contrary interpretation would mean the provision was drafted to have a catchall provision at both the beginning (“stock in trade”) and ending (“other periodicals”) of the list. Nonsense.

This is consistent with the well-known rule of statutory (and ordinance) interpretation, *ejusdem generis*. The rule gives “effect to both particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class.” City of West Fargo v. Williams, 930 N.W.2d 102, 107 (N.D. 2019) (internal quotation marks omitted; quoting Olson v. Job Service N.D., 827 N.W. 2d 36, 41 (N.D. 2013)). Books, magazines, and periodicals are all members of an identifiable “kind or genus.” Id. The items Romantix-Fargo intends to sell, such as bath and body products, lingerie, and intimacy aids, do not fit into that genus. If the City intended to regulate “Adult Products” it would have said so in its ordinances. If it intended to use “stock in trade” as a catchall provision, there would be no need to then list “books magazines, and other periodicals,” and those terms would be rendered meaningless.

Romantix-Fargo’s interpretation is also consistent with the City’s historical application of those terms. The Zoning Confirmation Letter, **Ex. 3**, previously supplied by the City and certified to be accurate, appropriately focuses exclusively on the terms “books, magazines, and other periodicals.” The phrase “stock in trade” does not even appear in that letter. *See Ex. 3*. And, of course, the Zoning Confirmation Letter confirmed that removing “most” of the printed materials

would mean the establishment would no longer be an Adult Bookstore. And, of course, the definition of an Adult Bookstore does not change from zoning district to district.

The Denial Letter focuses on “Adult Products.” However, that phrase appears nowhere in the Land Development Code or even the FMC as a whole. The Planning Director’s decision to deny the change of use based on an undefined and unregulated class of goods is baseless.

2. “Matter” matters.

Perhaps the most fundamental canon of statutory interpretation is that one must “give meaning and effect to every word, phrase, and sentence and [must] not adopt a construction which would render part of a statute mere surplusage.” *State v. Buchholz*, 692 N.W.2d 105, 106 (N.D. 2005) (internal quotation marks omitted; quoting *State v. Laib*, 644 N.W. 2d 878, 882 (N.D. 2002)) The Planning Director’s application of FMC § 20-1202(2) utterly ignores the term “matter” therein.

In the present context, the term “matter,” is best defined as: “the subject or substance of a discourse or writing.” *Matter*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/matter> (last visited Sept. 19, 2022).

Books, magazines, and periodical are writings that can contain a “subject or substance,” which can “depict[] or describe[] specified sexual activities or specified anatomical areas. Hosiery, shoes, and even intimacy aids do not. Even if an item looks like a “Specified Anatomical Area,” FMC § 20-1202(59), applying FMC § 20-1202(2) to such a product necessarily and improperly ignores the term “matter.”

Further, even if an item had packaging that displayed a Specified Anatomical Area—none were identified in the Denial Letter—it cannot fairly be said that the item itself is “distinguished or characterized” by that image on its packaging. The packaging is just marketing for the product. FMC § 20-1202(2) simply was not drafted to apply to products and the words used in that provision do not function to regulate products.

3. Fargo has chosen not to regulate adult products.

The Denial Letter seeks to sweep Romantix-Fargo’s store into the definition of Adult Bookstore by reference to considerations not contained in FMC § 20-1202(2). In particular, the Denial Letter references “Adult Products” and the business’s intent to limit admission to persons 18 years of age or older. Neither are contained in FMC § 20-1202(2) or serve as a valid consideration for decision.

Those concepts can be found in N.D.C.C. § 40-05-17, which provides a framework for municipalities to regulate “adult establishments.” The “totality of the circumstances” language contained in the Denial Letter—but not FMC § 20-1202—is a reflection of the test set forth in N.D.C.C. § 40-05-17(2) used to determine whether a business contains a “preponderance” of regulated products. N.D.C.C. § 40-05-17(2)(g) specifically sets forth that a municipality operating under that framework may consider “whether the establishment prohibits minors from entering the premises or any portion thereof.” Fargo’s Land Development Code contains no similar provision.

It is noteworthy that N.D.C.C. § 40-05-17 was enacted in 1981 while FMC § 20-1202(2) was enacted in 1999. Fargo, thus, knowingly chose to regulate adult businesses in a *different* manner than the framework supplied by the State of North Dakota.

The state statute contains a similar definition of “adult bookstore”:

. . . [A] bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.

N.D.C.C. § 40-05-17(1)(a). The state statute also contains a separate definition for “Sexually oriented devices,”: “any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.” N.D.C.C. § 40-05-17(1)(g)).

“Sexually oriented devices” are not mentioned in Fargo’s Land Development Code’s definition of an “Adult Bookstore.” This confirms that “Sexually oriented devices,” or “adult products,” are something different than what an Adult Bookstore offers for sale. And, if Fargo wished to regulate such products, the state had already supplied the language to do so, years in advance of Fargo enacting its ordinance. Fargo simply made the understandable decision *not* to regulate those products.

4. The Director’s application of FMC § 20-1202(2) to Romantix-Fargo is inconsistent with the City’s regulation of similar businesses.

Romantix-Fargo will not be the first establishment in Fargo to sell “adult products” while not being classified as an Adult Bookstore or any type of Adult Entertainment Center. Examples of other such businesses include two Enchantasys’ locations. *See Ex. 9*, at p. 2. The Enchantasys’ locations appear to sell similar products to what Romantix-Fargo proposes, plus some DVDs and magazines. *See Exhibit 11*, at pp. 3-5, 8-10.

The Enchantasys at 2551 45th Street South is located in the GC zoning district, which can permit an Adult Entertainment Center. FMC § 20-0401. However, it is also within 350 feet of an

establishment serving alcohol, within 1000 feet from a daycare, and within 400 feet of a park. **Ex. 11**, at pp. 1-2. Similarly, the other Enchantasys at 2512 7th Avenue South is located in a LI (light industrial) district, which also can permit Adult Entertainment Centers. FMC § 20-0401. However, like the other Enchantasys location, it is located within 1,000 feet from a daycare, less than 1,200 feet from a park, and less than 900 feet from a residential area. **Ex. 11**, at pp.6-7. All of these would be violations of the use standards set forth in FMC § 20-402(A) if the businesses were classified as Adult Entertainment Centers.

Given that these Enchantasys locations are *not* classified by the City of Fargo as Adult Entertainment Centers, it appears that the Director has fashioned an *ad hoc* application of the definition of an Adult Bookstore specifically to prevent Romantix-Fargo from opening in the DMU district.

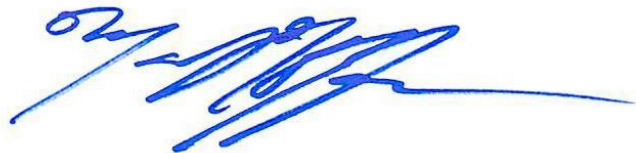
CONCLUSION

Romantix-Fargo respectfully requests that the City Commission overturn the Director's decision to deny the Change of Use Permit application and issue it a Change of Use Permit to allow it to open and operate on the Property. The Director's decision is contrary to the plain language Land Development Code as well as the City's past and present interpretation and application of the definition of an Adult Bookstore.

As Attorney Reich originally stated at the very beginning of this project, Romantix-Fargo "is proposing to open a non-adult business" at the Property. **Ex. 5**, at p. 2. Retail Sales and Services uses are permitted by right in the DMU district; thus, the change of use must be granted. If the City has concerns with any of the products that Romantix-Fargo carries, it would be happy to explore those concerns with the City in the context of an operating business. However, there simply exists no lawful basis for denying the requested Change of Use Permit.

Respectfully submitted,

SHAFER & ASSOCIATES, P.C.



By: Matthew J. Hoffer

Attachment to Appeal of a Board of Adjustment Decision
October 6, 2022
Page 12

KENNELLY BUSINESS LAW



By: Ben Williams
1213 NP Ave, Suite 301
Fargo, ND 58102

Enclosures:

Exhibits 1-11 as referenced herein, available at:
<https://www.dropbox.com/sh/y2i2qwmassk3vr/AAClo9J0qcHaiC1jFIVe9yLra?dl=0>



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): <u>Romantix-Fargo, Inc. (leasee)</u>
Address: <u>4655 N. Colorado Blvd.</u> <u>Denver, CO 80216</u>
Primary Phone: <u>Contact via Counsel</u>
Alternative Phone: _____
Fax: _____
Email: _____

Representation Information (if applicable)
Name (printed): <u>Ben Williams</u>
Address: <u>1213 NP Avenue, Fargo, ND</u>
Company <u>Kennelly Business Law</u>
Primary Phone: <u>701-478-4900</u>
Alternative Phone: _____
Fax: <u>701-478-4330</u>
Email: <u>Ben@KennellyBusinessLaw.com</u>
<input type="checkbox"/> Same as property owner

Location of property involved in the appealed decision (if applicable)
Address: <u>74 Broadway N, Fargo, ND</u>
Legal Description (attach separate sheet if more space is needed): <u>*02/23/88 SPL/FR 2381-01700&2381-01950</u>

Item for Appeal (attach separate sheet if more space is needed)
<u>Denial of Change of Use Permit application per the Planning Director's letter dated September 7, 2022.</u>

Reason for Appeal (attach separate sheet if more space is needed)
<u>See attached.</u>



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): [Signature] Date: 9/19/22
Representative (Signature): [Signature] Date: 9/19/22

Office Use Only
Date Filed: _____ Pre-Application Meeting Date: _____
Application Complete: Yes No Reviewed By: _____

LAW OFFICES
SHAFFER & ASSOCIATES, P.C.
A PROFESSIONAL CORPORATION
3800 CAPITAL CITY BLVD., SUITE 2
LANSING, MI 48906
E-MAIL info@bradshaferlaw.com
PHONE: 517-886-6560
FAX: 517-886-6565

BRADLEY J. SHAFER
ALSO MEMBER, AZ BAR
brad@bradshaferlaw.com

MATTHEW J. HOFFER
matt@bradshaferlaw.com

ZACHARY M. YOUNGSMAN
zack@bradshaferlaw.com

September 19, 2022

VIA EMAIL TO Planning@FargoND.gov

The City of Fargo
Planning and Development
225 4th Street North
Fargo, ND 58102
T: 701-241-1474
E: Planning@FargoND.gov

Re: *74 Broadway N; Permit No. 2208-0570-COU*
Attachment to Appeal of an Administrative Decision

Dear Board of Adjustments:

This firm, in association with Ben Williams of Kennelly Business Law in Fargo, North Dakota, represent Romantix-Fargo, Inc. with respect to the present Appeal of an Administrative Decision regarding the denial of a Change of Use Permit application as stated in Planning Director Nicole Crutchfield's September 7, 2022, letter to Josh Porter of Romantix, Inc., and Gill's Investment LTD. The "LAMA Permit Summary" available on the City of Fargo, North Dakota's website identifies the aforementioned request as "Permit Number: 2208-0570-COU."

Gill's Investment LTD originally applied for the subject Change of Use Permit for 74 Broadway N, Fargo, North Dakota (the "Property") on or about August 15, 2022, and paid all necessary fees then due. Romantix-Fargo, Inc. (hereafter simply "Romantix-Fargo"), has leased and is the current occupant of the Property. As the lessee, Romantix-Fargo—who intends to operate a retail establishment upon the Property—appeals the change of use application's denial as an aggrieved party pursuant to Fargo Municipal Code ("FMC") § 20-0916.

The Planning Director's decision to deny the requested change of use is in error because the Property is appropriately zoned for retail use and because Romantix-Fargo's intended retail operation would not be an Adult Bookstore, as defined in FMC § 20-1202(2), and is, therefore, *not* precluded from operating in the DMU, Downtown Mixed-Use District. In addition to being unsupported by the FMC, the denial is an ongoing violation of Romantix-Fargo's First and Fourteen Amendment rights, which continues to cause it to incur substantial damages.

RELEVANT MUNICIPAL PROVISIONS

Fargo's Land Development Code is set forth in Chapter 20 of the Fargo Municipal Code. The relevant sections thereof are set forth below:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

[FMC § 20-1202(2)].

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

[FMC § 20-1202(5)].

Specified Anatomical Areas:

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola;
and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

[FMC § 20-1202(59)].

Specified Sexual Activities:

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy; and
- c. Fondling of human genitals, pubic region, buttock or female breast.

[FMC § 20-1202(60)].

The Property is located in a DMU district. FMC § 20-0212(B) states that “[u]ses are allowed in the DMU district in accordance with the Use Table of Sec. 20-0401.” [FMC § 20-0212 – DMU, Downtown Mixed Use District].

This table is an intersection of uses and districts with categories and types of uses listed in the rows and districts arranged in the columns. The intersection of “Retail Sales and Service” and the “DMU” district is marked by a “P.” According to FMC 20-0401(B) (entitled “P Uses Permitted By-Right”): “A ‘P’ indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.”

[FMC § 20-0401 – Use Table].

“Retail Sales and Service” is defined in FMC § 20-1203(D)(6):

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

(2) Personal Service-Oriented:

Branch banks; emergency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; and animal grooming.

(3) Entertainment-Oriented:

Restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days.

(4) Repair-Oriented:

Repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

[FMC § 20-1203 – Use Categories].

BACKGROUND

The operators of Romantix-Fargo and its separately incorporated sister stores have gone to great lengths to ensure the proposed operation at the Property would *not* meet the definition of an adult bookstore as defined in FMC § 20-1202(2). Romantix-Fargo has further stated that it would adjust its inventory to ensure compliance with the Land Development Code.

Back on February 22, 2019, attorney for Romantix-Fargo Bradley J. Reich spoke with Kylie Bagley, then a planner with the City of Fargo, regarding the Romantix store at 417 Northern Pacific Avenue and the Sam & Delilah's at 1015 38th Street North. Mr. Reich confirmed the substance of his and Ms. Bagley's conversation via an e-mail addressed to Ms. Bagley, a copy of which is attached hereto as **Exhibit 1**. As **Ex. 1** recounts, the owner of those businesses was proposing to "build an 'adult bookstore', 'adult arcade' and 'adult theater'" adjacent to Sam & Delilah's. Although Sam & Delilah's was located in a district permitting adult entertainment centers, use standards prohibited an adult entertainment center from being located within 1,250 feet of another adult entertainment center. FMC §§ 20-1202(5), 20-0402(A)(3). Mr. Reich confirmed with Ms. Bagley that so long as Sam & Delilah's removed its "sexually oriented 'books, magazines, and other periodicals' . . . it would not constitute an 'adult bookstore' as that term is defined in Section 20-1202 of the [FMC]." It was understood that Sam & Delilah's would continue to sell adult-themed devices, products and novelties, just like the product mix Romantix-Fargo proposes to sell.

On February 27, 2019, Mr. Reich spoke with Ms. Bagley by telephone. Ms. Bagley indicated that the whole planning department had a meeting that morning to make sure everyone was on the same page regarding the Sam & Delilah's proposal. Everyone in the planning department agreed that, as proposed, Sam & Delilah's would not meet the definition of an Adult Bookstore.

On March 5, 2019, Ms. Bagley indeed confirmed: “Based on what you have previously described in your emails the planning department does not see an issue with zoning if the new adult bookstore, adult arcade and adult theater were to be placed at 1015 38 St N at this time.” This email along with prior emails in that direct chain are attached as **Exhibit 2**.

Attorney Reich’s forthright communications with the City culminated with a June 16, 2021, zoning confirmation letter, attached hereto as **Exhibit 3**, regarding the 1055 38th Street North property. That letter begins by stating: “The undersigned certifies that the information contained in this letter is accurate based on or relating to the information supplied[.]” That letter then plainly confirms:

Based on the attached letter from 2019, it is assumed that Sam & Delilah’s that is to the south of the subject property would remove most of the sexually oriented “books, magazines and other periodicals” which would no longer constitute Sam & Delilah’s as an adult bookstore. Therefore the spacing requirement for the proposed Romantix location at 1055 38th Street North would be met.

Ex. 3, at p. 1.

The letter referenced in **Ex. 3**, which is also included as p. 3 of the same, is identical to the email attached as **Ex. 1**.

Ultimately, the 1015 38th Street North project did not come to fruition. The operators are still contemplating closing the store at 417 Northern Pacific Avenue; however, that option will not become available until a new store is open to the public.

Like the previous project, Romantix-Fargo’s plans to operate at the Property began with its operators reaching out to the City of Fargo. Attorney Reich connected with Planning Coordinator Donald Kress and explained that Romantix-Fargo was pursuing opening a store at the Property. He explained that the store would not carry sexually explicit books, magazines, or periodicals; thus, he believed that it would be classified as a Retail Sales and Service establishment permitted by-right in the DMU district.

Attorney Reich confirmed his conversation with Mr. Kress in an email dated June 10, 2022, a copy of which is attached hereto as **Exhibit 4** (multiple emails). Mr. Kress confirmed that Retail Sales and Service were permitted in the DMU district, but “Adult uses” were not. Mr. Reich replied:

Thank you for your response! I appreciate it. As I read your email, you agree with my interpretation of the code, and as such, Romantix would be allowed to open their proposed business at that location, assuming they have no live entertainment (adult facility); no arcade or theater (adult cinema) and no sexually explicit books

magazines or other periodicals (adult bookstore). Thank you again for your prompt attention to this matter!

Ex. 4, at p.1. Mr. Kress did not provide any further response.

On or about August 15, 2022, Gill's Investment, LTD applied for a Change of Use Permit as the owner of the Property. The application sought to change the use classification for the Property to Retail Sales and Service, which is permitted as a by-right use in the DMU.

To avoid any confusion, that same day, Josh Porter reached out to Assistant Planning Director Mark Williams. After speaking with Mr. Williams by phone, Mr. Porter forwarded to Mr. Williams a copy of Mr. Reich's June 10, 2022, email correspondence with Mr. Kress. *See Exhibit 5* hereto.

Moments before forwarding the email referenced above to Mr. Williams, Mr. Porter had followed up with Mr. Williams and provided a general description of the anticipated retail store at the Property. *See Exhibit 6* hereto. Mr. Porter was clear that the anticipated store at the Property "will have no adult DVDs, Arcades, or Theatres." **Ex. 6**, at p. 1. On August 18, 2022, Mr. Porter attended a zoom conference with Mr. Williams and Mayor Tim Mahoney. Mr. Porter, again, confirmed that the store would offer, "no magazines, no DVDs, no services of any kind." Mayor Mahoney asked Mr. Porter to make arrangements with the Downtown Business Partnership, so that he could address concerns that the store would be like the "ABC Bookstore," referencing the Romantix at 417 Northern Pacific Avenue that operates as an Adult Bookstore and Adult Cinema. That was the only "problem" identified at the meeting.

On August 22, 2022, Romantix-Fargo learned from its landlord that there was an apparent issue with its change of use. *See Exhibit 7*. On August 23, 2022, Mr. Porter followed up with Mr. Williams and provided a detailed description of the store. *See Exhibit 8*. Mr. Porter again emphasized that the store's inventory would include "No DVDs, No Magazines, No Media," and compared the inventory mix with the three Enchantasys stores that Fargo does not regard as Adult Bookstores. **Ex. 8**, at p. 3. Mr. Porter supplied Mr. Williams with approximately 25 photographs from a similar store further confirming that the operation would *not* be an Adult Bookstore. **Ex. 8**, at pp. 7-31.

Shortly thereafter, Mr. Williams and Ms. Crutchfield called Mr. Porter and from there forward, Ms. Crutchfield became the City's primary point of contact with regard to Romantix-Fargo's proposed use of the Property.

On August 29, 2022, Mr. Porter reached out to the Director of Planning & Development, Nicole Crutchfield. *See Exhibit 9*. He requested clarification on how the City interpreted "substantial or significant" so that Romantix-Fargo could amend its business plans and resubmit the application. No such clarification was provided.

Instead, on September 7, 2022, Nicole Crutchfield issued a letter to Josh Porter and Gill's Investment LTD denying the requested change of use application. This "Denial Letter" is attached hereto as **Exhibit 10**. The letter provided the following less-than-helpful explanation:

Based on the application and additional information provided for consideration of the application, including product and sales information, store layout, admission limited to persons 18 years of age and older, as well as other relevant information, I made the decision that the definition of Adult Bookstore "stock in trade" applies to the use, and that the primary business purposes consisting of adult products is substantial or significant.

Ex. 10, at p. 1.

The present appeal of the Planning Director's denial of the change of use application now follows.

ANALYSIS

The Planning Director's (hereafter, the "Director") decision to deny the application for a change of use is contrary to the plain language of the City of Fargo's Land Development Code, it is contrary to Fargo's longstanding application of the definition of an "Adult Bookstore," and it is contrary to Romantix-Fargo's rights under the First and Fourteenth Amendments to the United States Constitution. The denial is no more than a political decision designed to appease existing business in the area.

The Denial Letter, **Ex. 10**, uses general terms and concepts to explain the result. It does not identify so much as a single item the Planning Director identified as an "Adult Product." The focus on the phrase "stock in trade" indicates that the Planning Director is referring to items that are *not* books, magazines, or periodicals. After all, Romantix-Fargo had made clear that it will carry *not* such items. The language in FMC § 20-1202(2), however, simply does not allow for such a novel interpretation.

1. The Director misapplies the phrase "stock-in-trade."

As reproduced above, an establishment only becomes an Adult Bookstore when it has "as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas." FMC § 20-1202(2). These words, of course, having meaning.

There is no indication in Fargo's Land Development Code that the phrase "stock in trade" means something completely different than the terms that follow, "books, magazines, and other periodicals," such that the phrase can be applied to something other than those printed materials.

First, a natural reading of the phrase is that it identifies what a bookstore's stock-in-trade is; namely, books, magazines, and periodicals. The phrase is an opening to the list; not a part of the three-noun list. A contrary interpretation would mean the provision was drafted to have a catchall provision at both the beginning ("stock in trade") and ending ("other periodicals") of the list. Nonsense.

This is consistent with the well-known rule of statutory (and ordinance) interpretation, *ejusdem generis*. The rule gives "effect to both particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class." City of West Fargo v. Williams, 930 N.W.2d 102, 107 (N.D. 2019) (internal quotation marks omitted; quoting Olson v. Job Service N.D., 827 N.W. 2d 36, 41 (N.D. 2013)). Books, magazines, and periodicals are all members of an identifiable "kind or genus." Id. The items Romantix-Fargo intends to sell, such as bath and body products, lingerie, and intimacy aids, do not fit into that genus. If the City intended to regulate "Adult Products" it would have said so in its ordinances.

Romantix-Fargo's interpretation is also consistent with the City's historical application of those terms. The Zoning Confirmation Letter, **Ex. 3**, previously supplied by the City and certified to be accurate, appropriately focuses exclusively on the terms "books, magazines, and other periodicals." The phrase "stock in trade" does not even appear in that letter. *See Ex. 3*. And, of course, the Zoning Confirmation Letter confirmed that removing "most" of the printed materials would mean the establishment would no longer be an Adult Bookstore.

The Denial Letter focuses on "Adult Products." However, that phrase appears nowhere in the Land Development Code or even the FMC as a whole. The Planning Director's decision to deny the change of use based on an undefined and unregulated class of goods is baseless.

2. "Matter" matters.

Perhaps the most fundamental canon of statutory interpretation is that one must "give meaning and effect to every word, phrase, and sentence and [must] not adopt a construction which would render part of a statute mere surplusage." State v. Buchholz, 692 N.W.2d 105, 106 (N.D. 2005) (internal quotation marks omitted; quoting State v. Laib, 644 N.W. 2d 878, 882 (N.D. 2002)) The Planning Director's application of FMC § 20-1202(2) utterly ignores the term "matter" therein.

In the present context, the term "matter," is best defined as: "the subject or substance of a discourse or writing." *Matter*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/matter> (last visited Sept. 19, 2022).

Books, magazines, and periodical are writings that can contain a "subject or substance," which can "depict[] or describe[] specified sexual activities or specified anatomical areas. Hosiery,

shoes, and even intimacy aids do not. Even if an item looks like a “Specified Anatomical Area,” FMC § 20-1202(59), applying FMC § 20-1202(2) to such a product necessarily and improperly ignores the term “matter.”

Further, even if an item had packaging that displayed a Specified Anatomical Area—none were identified in the Denial Letter—it cannot fairly be said that the item itself is “distinguished or characterized” by that image on its packaging. The packaging is just marketing for the product. FMC § 20-1202(2) simply was not drafted to apply to products and the words used in that provision do not function to regulate products.

3. Fargo has chosen not to regulate adult products.

The Denial Letter seeks to sweep Romantix-Fargo’s store into the definition of Adult Bookstore by reference to considerations not contained in FMC § 20-1202(2). In particular, the Denial Letter references “Adult Products” and the business’s intent to limit admission to persons 18 years of age or older. Neither are contained in FMC § 20-1202(2) or serve as a valid consideration for decision.

Those concepts can be found in N.D.C.C. § 40-05-17, which provides a framework for municipalities to regulate “adult establishments.” The “totality of the circumstances” language contained in the Denial Letter—but not FMC § 20-1202—is a reflection of the test set forth in N.D.C.C. § 40-05-17(2) used to determine whether a business contains a “preponderance” of regulated products. N.D.C.C. § 40-05-17(2)(g) specifically sets forth that a municipality operating under that framework may consider “whether the establishment prohibits minors from entering the premises or any portion thereof.” Fargo’s Land Development Code contains no similar provision.

It is noteworthy that N.D.C.C. § 40-05-17 was enacted in 1981 while FMC § 20-1202(2) was enacted in 1999. Fargo, thus, knowingly chose to regulate adult businesses in a *different* manner than the framework supplied by the State of North Dakota.

The state statute contains a similar definition of “adult bookstore”:

. . . [A] bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.

N.D.C.C. § 40-05-17(1)(a). The state statute also contains a separate definition for “Sexually oriented devices”: “any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.” N.D.C.C. § 40-05-17(1)(g)).

“Sexually oriented devices” are not mentioned in Fargo’s Land Development Code’s definition of an “Adult Bookstore.” This confirms that “Sexually oriented devices,” or “adult products,” are something different than what an Adult Bookstore offers for sale. And, if Fargo wished to regulate such products, the state had already supplied the language to do so, years in advance of Fargo enacting its ordinance. Fargo simply made the understandable decision *not* to regulate those products.

4. The Director’s application of FMC § 20-1202(2) to Romantix-Fargo is inconsistent with the City’s regulation of similar businesses.

Romantix-Fargo will not be the first establishment in Fargo to sell “adult products” while not being classified as an Adult Bookstore or any type of Adult Entertainment Center. Examples of other such businesses include two Enchantasys’ locations. *See Ex. 9*, at p. 2. The Enchantasys’ locations appear to sell similar products to what Romantix-Fargo proposes, plus some DVDs and magazines. *See Exhibit 11*, at pp. 3-5, 8-10.

The Enchantasys at 2551 45th Street South is located in the GC zoning district, which can permit an Adult Entertainment Center. FMC § 20-0401. However, it is also within 350 feet of an establishment serving alcohol, within 1000 feet from a daycare, and within 400 feet of a park. **Ex. 11**, at pp. 1-2. Similarly, the other Enchantasys at 2512 7th Avenue South is located in a LI (light industrial) district, which also can permit Adult Entertainment Centers. FMC § 20-0401. However, like the other Enchantasys location, it is located within 1,000 feet from a daycare, less than 1,200 feet from a park, and less than 900 feet from a residential area. **Ex. 11**, at pp.6-7. All of these would be violations of the use standards set forth in FMC § 20-402(A) if the businesses were classified as Adult Entertainment Centers.

Given that these Enchantasys locations are *not* classified by the City of Fargo as Adult Entertainment Centers, it appears that the Director has fashioned an *ad hoc* application of the definition of an Adult Bookstore specifically to prevent Romantix-Fargo from opening in the DMU district.

CONCLUSION

Romantix-Fargo respectfully requests that the Board of Adjustments overturn the Director’s decision to deny the Change of Use Permit application and issue it a Change of Use Permit to allow it to open and operate on the Property. The Director’s decision is contrary to the plain language Land Development Code as well as the City’s past and present interpretation and application of the definition of an Adult Bookstore.

As Attorney Reich originally stated at the very beginning of this project, Romantix-Fargo “is proposing to open a non-adult business” at the Property. **Ex. 5**, at p. 2. Retail Sales and Services uses are permitted by right in the DMU district; thus, the change of use must be granted. If the

Attachment to Appeal of an Administrative Decision
September 19, 2022
Page 11

City has concerns with any of the products that Romantix-Fargo carriers, it would be happy to explore those concerns with the City in the context of an operating business. However, there simply exists no lawful basis for denying the requested Change of Use Permit.

Respectfully submitted,

SHAFER & ASSOCIATES, P.C.



By: Matthew J. Hoffer

KENNELLY BUSINESS LAW



By: Ben Williams
1213 NP Ave, Suite 301
Fargo, ND 58102

Enclosures:

Exhibits 1-11 as referenced herein, available at:
<https://www.dropbox.com/sh/y2i2qwmmassk3vr/AAClo9J0qcHaiC1jFIVc9yLra?dl=0>

From: Brad <suite600@aol.com>
Subject: Romantix/Sam & Delilah
Date: February 22, 2019 at 1:00:11 PM MST
To: kbagley@fargond.gov
Cc: "sbrown@romantixexchange.com" <sbrown@romantixexchange.com>

Dear Ms. Bagley,

This is to confirm the substance of our telephone conversation today, February 22, 2019. As I mentioned, I represent Romantix Bookstore, located at 417 Northern Pacific Avenue, and Sam & Delilah's located at 1015 38th Street N., in Fargo, N.D. The owner of these businesses is proposing to build an "adult bookstore", "adult arcade" and "adult theater" next to the Sam & Delilah's at the 1015 38th Street N location referred to above.

As we discussed, in accordance with Section 20-0401 of the Fargo Zoning Code, this location is properly zoned for an "adult entertainment center" (Limited Industrial), subject to the "use standards" set forth in Section 20-0402 of the code. According to our calculations, there are no distance impediments as specified in the "use standards" that would prohibit this project from being completed and approved. As we discussed, the Sam & Delilah's currently at this location would continue to exist, but would remove most, if not all, of the sexually oriented "books, magazines and other periodicals" thus assuring that Sam & Delilah's would not constitute an "adult bookstore" as that term is defined in Section 20-1202 of the Fargo Zoning Code. As such, the proximity of Sam & Delilah's to the proposed new Romantix adult entertainment center would not pose a problem in terms of the separation of use standards set for in Section 20-0402.

Assuming this proposed project would meet with the city's approval and all necessary permits would be issued and the project completed, Romantix would then offer to close its current adult entertainment center located at 417 Northern Pacific Avenue, as it is our understanding that the city of Fargo has long desired to redevelop that area of the city. Of course, this offer to close the current Romantix location would be subject to making all necessary arrangements with the landlord regarding the existing lease, but it is our firm belief that this would not be an issue.

Please consider this proposal and let me know what the city feels would be the best "next step" in the process. Thank you for your courtesy and cooperation in this matter.

Yours truly,

Bradley J. Reich. (Attorney for Romantix and Sam & Delilah).

3713 S. Andes Way
Aurora, CO 80013

(303) 693-1348
(cell no. 303-596-5441)

From: Kylene Bagley <kbagley@FargoND.gov>
Subject: Romantix - 1015 38 St N
Date: March 5, 2019 at 1:22:09 PM MST
To: Brad's Email <suite600@aol.com>

Brad,

Based on what you have previously described in your emails the planning department does not see an issue with zoning if the adult bookstore, adult arcade and adult theater were to be placed at 1015 38 St N at this time. A full review of the zoning district and compliance with the Land Development Code will be reviewed at the time of permitting, where further questions may arise based on what is submitted to the City of Fargo.

This email does not guarantee a building permit.

Kylie Bagley
Planner | Department of Planning & Development
City of Fargo | 225 Fourth Street North | Fargo, ND 58102
Phone: (701) 476-4152 | Email: KBagley@FargoND.gov

Begin forwarded message:

From: Brad <suite600@aol.com>
Subject: Re: Romantix
Date: February 27, 2019 at 10:50:46 AM MST
To: Kylene Bagley <kbagley@FargoND.gov>
Cc: sbrown@romantixexchange.com

Hi Kylie,

The answers to your questions are as follows:

1. Sam & Delilah's stock in trade would consist basically of apparel (clothing items), lotions, games, gag gifts, adult toys and a very small amount (if any) of adult videos. As we discussed, none of these items are specified in the Fargo zoning code as items that play a part in the definition of "adult bookstore" in accordance with Section 20-1202.
2. The proposed Romantix would be built in a separate building on the same parcel of land as Sam & Delilah's. We assume the city would want to assign a separate address or designate the buildings as "Unit A" and "Unit B" (or something along those lines?).
3. The time frame for Romantix seeking the necessary permits would be relatively soon. Perhaps in the next few weeks.

I hope this answers all of your questions, and again I want to thank you for your courtesy and cooperation. Brad

On Feb 27, 2019, at 10:04 AM, Kylene Bagley <kbagley@FargoND.gov> wrote:

Brad,

In your email you state that Sam & Delilah's would remove most if not all their sexually oriented books, magazines, etc., what exactly would be left in the store? Also would the proposed romantix be on the same property 1015 38th St N just in a separate building or on a separate parcel completely.

Thanks!

Kylie

-----Original Message-----

From: Brad's Email <suite600@aol.com>
Sent: Monday, February 25, 2019 10:11 AM
To: Kylene Bagley <kbagley@FargoND.gov>
Subject: Re: Romantix

***** CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Thanks! I sent you a hard copy in the mail to be safe.

Sent from my iPhone

On Feb 25, 2019, at 8:35 AM, Kylene Bagley <kbagley@fargond.gov> wrote:

Brad I was able to receive the word document. Thank you

Kylie

-----Original Message-----

From: Brad <suite600@aol.com>
Sent: Friday, February 22, 2019 5:49 PM
To: Kylene Bagley <kbagley@FargoND.gov>
Subject: Romantix

***** CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

June 16, 2021

Re: Zoning Confirmation Letter

Property: 1055 38th Street North
 Fargo, ND 58102

To whom it may concern:

The undersigned certifies that the information contained in this letter is accurate based on or relating to the information supplied; however, neither the undersigned nor the City assumes liability for errors and omissions. All information was obtained from public records which may be inspected during regular business hours. The undersigned hereby certifies the following with respect to the "property," described as parcel number 01-8734-00100-000.

1. **Current Zoning:** The property is located within the City of Fargo corporate limits. The current zoning classification for the property has been found to be LI, Limited Industrial.

It appears that the property is intended to be used for an adult bookstore/adult theater and adult arcade. Adult bookstore/adult theater and adult arcade are permitted *by right* in the LI, Limited Industrial subject to substandard A of Section 20-0402. Based on the attached letter from 2019, it is assumed that the Sam & Delilah's that is to the south of the subject property would remove most of the sexually oriented "books, magazines and other periodicals" which would no longer constitute Sam & Delilah's as an adult bookstore. Therefore the spacing requirement for the proposed Romantix location at 1055 38th Street North would be met. A full description of permitted uses can be found in Sections 20-0401 and 20-1203 of the City's Land Development Code, which can be accessed through the City of Fargo's website at:
 <https://www.municode.com/library/nd/fargo/codes/code_of_ordinances?nodeId=CH20LADECO_ART20-04USRE_S20-0401USTA>.

2. **Special Permits:** No other zoning districts or special conditions have been identified for this property.
3. **Conformance with Current Zoning Requirements:** There is no site plan on file for the current property. To determine if the property is currently in conformance with the LDC, a more precise evaluation of the property in the form of an on-site review would be needed.
4. **Zoning & Building Code Violations:** There are no records in the City files of unsatisfied zoning or building code violations that could be found. To check on the status of open permits, please contact the Inspections Department at 701-241-1561.

5. **Variances:** No records of any variances for the property could be found.

Please let me know if you have any questions.

Sincerely,



Kylie Bagley
Planner

*Law Offices of
Bradley J. Reich
3713 S. Ames Way
Aurora, Colorado 80013
(303) 596-5441*

Kylie Bagley

Planner | Department of Planning & Development
City of Fargo | 225 Fourth Street North | Fargo, ND 58102

February 22, 2019

Dear Ms. Bagley,

This is to confirm the substance of our telephone conversation today, February 22, 2019. As I mentioned, I represent Romantix Bookstore, located at 417 Northern Pacific Avenue, and Sam & Delilah's located at 1015 38th Street N., in Fargo, N.D. The owner of these businesses is proposing to build an "adult bookstore", "adult arcade" and "adult theater" next to the Sam & Delilah's at the 1015 38th Street N location referred to above.

As we discussed, in accordance with Section 20-0401 of the Fargo Zoning Code, this location is properly zoned for an "adult entertainment center" (Limited Industrial), subject to the "use standards" set forth in Section 20-0402 of the code. According to our calculations, there are no distance impediments as specified in the "use standards" that would prohibit this project from being completed and approved. As we discussed, the Sam & Delilah's currently at this location would continue to exist, but would remove most, if not all, of the sexually oriented "books, magazines and other periodicals" thus assuring that Sam & Delilah's would not constitute an "adult bookstore" as that term is defined in Section 20-1202 of the Fargo Zoning Code. As such, the proximity of Sam & Delilah's to the proposed new Romantix adult entertainment center would not pose a problem in terms of the separation of use standards set for in Section 20-0402.

Assuming this proposed project would meet with the city's approval and all necessary permits would be issued and the project completed, Romantix would then offer to close its current adult entertainment center located at 417 Northern Pacific Avenue, as it is our understanding that the city of Fargo has long desired to redevelop that area of the city. Of course, this offer to close the current Romantix location would be subject to making all necessary arrangements with the landlord regarding the existing lease, but it is our firm belief that this would not be an issue.

Please consider this proposal and let me know what the city feels would be the best "next step" in the process. Thank you for your courtesy and cooperation in this matter.

Yours truly,

Bradley J. Reich. (Attorney for Romantix and Sam & Delilah)

From: BRADLEY REICH <suite600@aol.com>
Subject: Re: Romantix
Date: June 10, 2022 at 3:50:08 PM MDT
To: Donald Kress <dkress@FargoND.gov>

Thank you for your response! I appreciate it. As I read your email, you agree with my interpretation of the code, and as such, Romantix would be allowed to open their proposed business at that location, assuming they have no live entertainment (adult facility); no arcade or theater (adult cinema) and no sexually explicit books magazines or other periodicals (adult bookstore). Thank you again for your prompt attention to this matter! Brad Reich

On Jun 10, 2022, at 3:43 PM, Donald Kress <dkress@FargoND.gov> wrote:

Brad,

74 Broadway is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retail sales and service, which is described in our Land Development Code (LDC) as:

6. Retail Sales and Service

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

LDC 20-1203.6

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

Thank you.

From: BRADLEY REICH <suite600@aol.com>

Sent: Friday, June 10, 2022 11:04 AM

To: Donald Kress <dkress@FargoND.gov>

Subject: Romantix

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello Mr. Kress. As per your request, and in accordance with our telephone conversation of today's date, this is to document the substance of our discussions. As you know, I represent the business in Fargo known as Romantix. My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an "adult entertainment center" because: (1) It would have no sexually explicit "books, magazines or other periodicals" and therefore, would not fall under the definition of "adult bookstore"; (2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of "adult cinema"; and (3) It would have no live entertainment, and therefore, would not fall under the definition of "adult facility". The relevant portions of the Fargo Zoning Code can be found in Section 20-1202, which states:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

3.

Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

4.

Adult Entertainment Facility: An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

5.

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

Brad Reich (Attorney for Romantix)
(303) 693-1348

From: [Mark Williams](#)
To: [Nicole Crutchfield](#)
Subject: FW: Romantix
Date: Tuesday, August 16, 2022 7:43:25 AM

FYI

From: Josh Porter <jporter@romantixexchange.com>
Sent: Monday, August 15, 2022 9:06 PM
To: Mark Williams <MWilliams@FargoND.gov>
Subject: Fwd: Romantix

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Mr Williams

Below is the email chain between our attorney and Mr. Kress.

Please let me know if you have any additional comments.

Thank you
Josh

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: BRADLEY REICH <suite600@aol.com>
Sent: Monday, August 15, 2022, 1:17 PM
To: Josh Porter <jporter@romantixexchange.com>
Subject: Fwd: Romantix

Begin forwarded message:

From: Donald Kress <dkress@FargoND.gov>
Subject: RE: Romantix
Date: June 10, 2022 at 3:43:25 PM MDT
To: BRADLEY REICH <suite600@aol.com>

Brad,

74 Broadway is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retail sales and service, which is described in our Land Development Code (LDC) as:

6. Retail Sales and Service

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

LDC 20-1203.6

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

Thank you.

From: BRADLEY REICH <suite600@aol.com>

Sent: Friday, June 10, 2022 11:04 AM

To: Donald Kress <dkress@FargoND.gov>

Subject: Romantix

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello Mr. Kress. As per your request, and in accordance with our telephone conversation of today's date, this is to document the substance of our discussions. As you know, I represent the business in Fargo known as Romantix. My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an "adult entertainment center" because: (1) It would have no sexually explicit "books, magazines or other periodicals" and therefore, would not fall under the definition of "adult bookstore"; (2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of "adult cinema"; and (3) It would have no live entertainment, and therefore, would not fall under the definition of "adult facility". The relevant portions of the Fargo Zoning Code can be found in Section 20-1202, which states:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade,

books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

3.

Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

4.

Adult Entertainment Facility: An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

5.

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

Brad Reich (Attorney for Romantix)
(303) 693-1348

From: [Mark Williams](#)
To: [Nicole Crutchfield](#)
Subject: FW: Fargo
Date: Tuesday, August 16, 2022 7:43:20 AM

FIY

From: Josh Porter <jporter@romantixexchange.com>
Sent: Monday, August 15, 2022 9:01 PM
To: Mark Williams <MWilliams@FargoND.gov>
Subject: Re: Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Mr Williams

Let me first apologize. I am writing this from a cell phone, as I'm stuck in a hotel in Madison WI right now.

I will send you several email chains from our attorney and Fargo's planning department confirming the interpretation of adult in Fargo.

In addition I would like to send you a complete floorplan showing where everything will be located. Unfortunately i dont have access to that from my cell phone.

I can explain the store is approximately 3300 sf. 600 sf will be storage and restroom. 2700 will be retail. 1400 sf will be devoted to apparel. 200 games and gifts. 300 sf to bath and body products. 600 sf will be sexual wellness products. 200 sf to the cash wrap. We will have no adult DVDs, Arcades, or Theaters. In addition the existing store will be closing shortly after the new year.

I have attached several pictures of a recently opened store. This store was opened 3 weeks ago, the Fargo store will be very similar.

I hope after reviewing the emails and the information here you will come to the same conclusion. Our store meets the definition of general retail in Fargo ND and does not require any additional permitting.

I will certainly provide any additional information you may need. If you have a moment to talk please let me know. I can make myself available anytime.

Regards,
Josh Porter
480 266 6888

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: [Mark Williams](#)
To: [Nicole Crutchfield](#); [Nancy Morris](#)
Subject: FW: Romantix in Fargo
Date: Monday, August 22, 2022 1:02:47 PM

FYI

----- Original message -----

From: Josh Porter <jporter@romantixexchange.com>
Date: 8/22/22 12:39 PM (GMT-06:00)
To: Mark Williams <MWilliams@FargoND.gov>
Cc: Mark Labertew <mlabertew@romantixexchange.com>, Kember Anderson <KAnderson@FargoND.gov>, Tim Mahoney <TMahoney@FargoND.gov>
Subject: Romantix in Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning everyone,

Thank you again for the time and conversation on Thursday.

Based on our conversation we are looking forward to getting this new store open on September 1. I'm concerned, however that I just received a disturbing message from the Landlord; saying there is a problem with their "change of use"?

On Thursday 8/18 our conversation ended positively and I was told to move forward. What happened in the last few days?

I'd also like to ask, why the landlord needs a change of use?

On June 10, 2022 Donald Kress confirmed the address was zoned DMU which permits retail sales and services.

I look forward to hearing from you.

Thank you for your time.

Regards,

Josh Porter

480 266 6888

From: Josh Porter
Sent: Tuesday, August 23, 2022 4:06 PM
To: Mark Williams <mwilliams@fargond.gov>; ncrutchfield@fargond.gov
Cc: Mark Labertew <mlabertew@romantixexchange.com>
Subject: Fargo Romantix Review

Good afternoon Mark and Nicole,

Thank you for the call today. I am happy to provide any information you need. If this is insufficient please let me know what additional detail you need.

Below is an approximate use of the retail space at 74 Broadway.
The space is 3,500 sqft.

Approximate space given to each area:

Cash Wrap / Storage / Dressing Room:	600sf
Apparel / Lingerie / Shoes:	1350sf
Bath / Body:	200sf
Party / Games / Bachelorette:	170sf
Health Aids:	100sf
Sexual Wellness Items:	600sf (less than 20% of floor space)
Advertising / Signage / Mannequins:	480sf
Total:	3500sf

In the image below you can see the position of each department.

Dark lines are walls.

Orange Rectangles are gondolas

Gray Rectangle is a shoe display

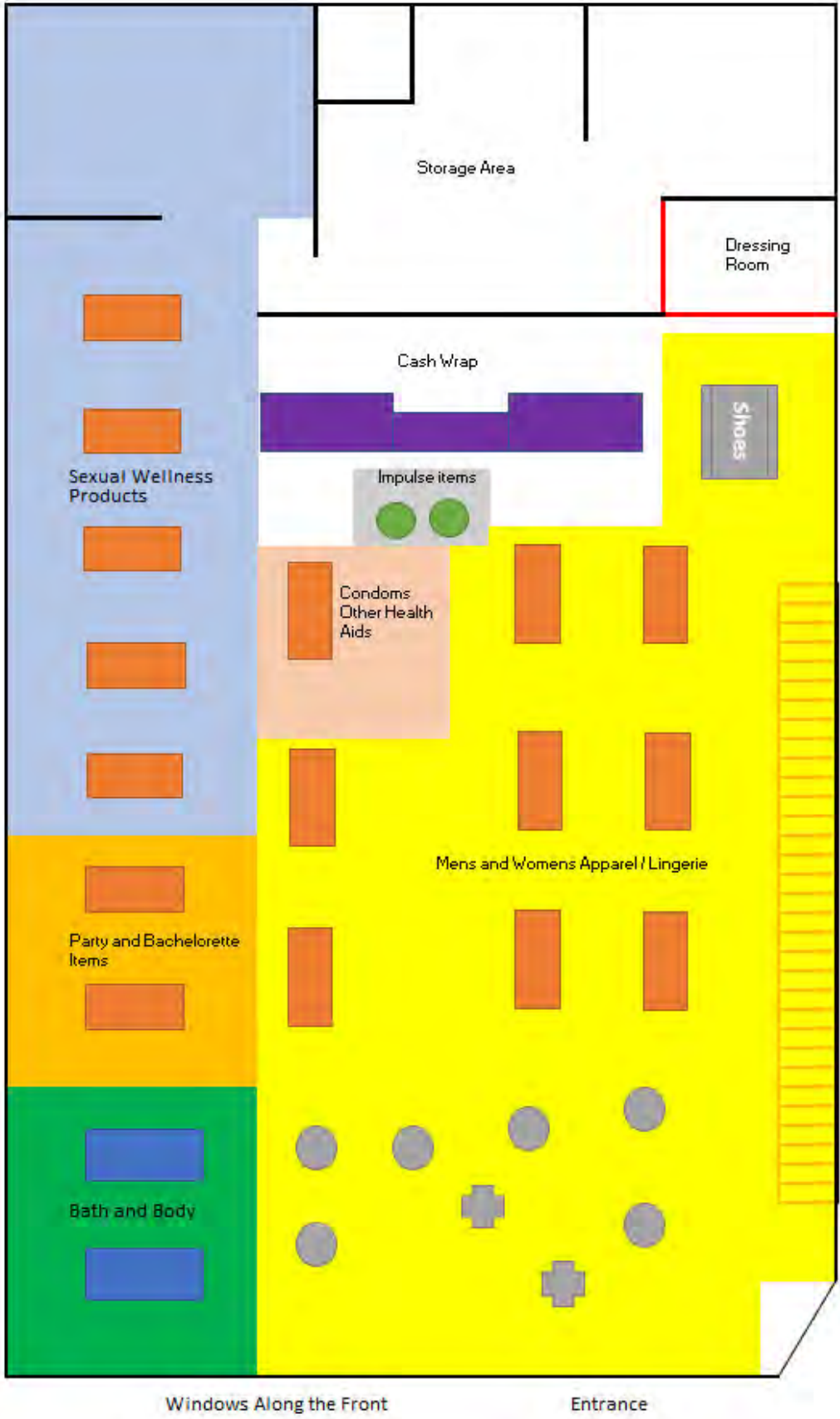
Blue Rectangles are Glass Cube displays

Gray Circles are hanging apparel fixtures

Orange lines on right side is an Outrigger Apparel Display

Green Circles are 4 tier bowl displays for impulse items

The highlighted colors signify what area of the store each category will be placed.



Inventory value is fluid and will fluctuate from time to time, however we will keep the value in these approximations:

Total Inventory Value at open 9/1: \$60,867

Apparel: \$16,445

Bath and Body: \$15,790

Games / Bachelorette: \$2,243

Novelties: \$7,177

Adult Novelties: \$17,686

Condoms / Health: \$1,526

No DVDs, No Magazines, No Media, No Viewing Areas, No Theaters of any kind.

The inventory mix will be very similar to the three Enchantasy stores in Fargo operating without any kind of SOB.

Per conversation with Nicole Crutchfield I am adding a definition of Novelty and Adult Novelty: Novelty: This category consists of items with no adult context. Innocuous packaging, standard items found in a multitude of other retailers. Examples include Pillows, Rope, Whipped Cream Dispensers, Furniture, Feathers, and Bed sheets.

Adult Novelty: This category consists of devices, and products with adult oriented packaging.

On June 10th our attorney reached out to the planning department with the following email breaking down our understanding of the code.

The planning department's response confirmed our interpretation later on June 10th.

Hello Mr. Kress.

As per your request, and in accordance with our telephone conversation of today's date, this is to document the substance of our discussions.

As you know, I represent the business in Fargo known as Romantix.

My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an "adult entertainment center" because:

(1) It would have no sexually explicit "books, magazines or other periodicals" and therefore, would not fall under the definition of "adult bookstore";

(2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of "adult cinema"; and

(3) It would have no live entertainment, and therefore, would not fall under the definition of "adult facility".

The relevant portions of the Fargo Zoning Code can be found in Section 20-1202, which states:

Adult Bookstore: *An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals*

that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

Adult Cinema: *An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.*

Adult Entertainment Facility: *An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.*

Adult Entertainment Center: *An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.*

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

*Brad Reich (Attorney for Romantix)
(303) 693-1348*

Donald Kress responded stating:

Brad,

74 Broadway is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retail sales and service, which is described in our Land Development Code (LDC) as:

6. Retail Sales and Service

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

LDC 20-1203.6

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

Thank you.

The products we are offering for sale, fall under sections a. and c. of this code. Consumer Goods, Clothing, Household Products, and Jewelry.

Webster's Definition of Consumer Goods, unless otherwise defined in the code is: Consumer good; in economics, **any tangible commodity produced and subsequently purchased to satisfy the current wants and perceived needs of the buyer.**

Based on the above interaction with the Fargo Planning Dept; we signed a 7 year lease for the space at 74 Broadway.

We have spent more than \$400,000 on improvements, travel, freight, furniture, and inventory for this store.

We received our sign permit on July 26.

We were issued a sales and Use Tax Permit on July 30.

We have been up front and open about our intentions the whole way through this process.

At no time in this process has anyone dissuaded us from moving forward.

Now one week from opening all of these questions come up???

I have attached several images of our stores interiors, and exteriors for your review.
As mentioned on our call, if it would appease the city and our neighbors, we are willing to place tint on the windows.

If you need any additional information please let me know.

I look forward to hearing from you soon.

Regards,



Josh Porter

Vice President of Operations
Progressive Retail Management

Office: 303-586-8472

Mobile: 480-266-6888

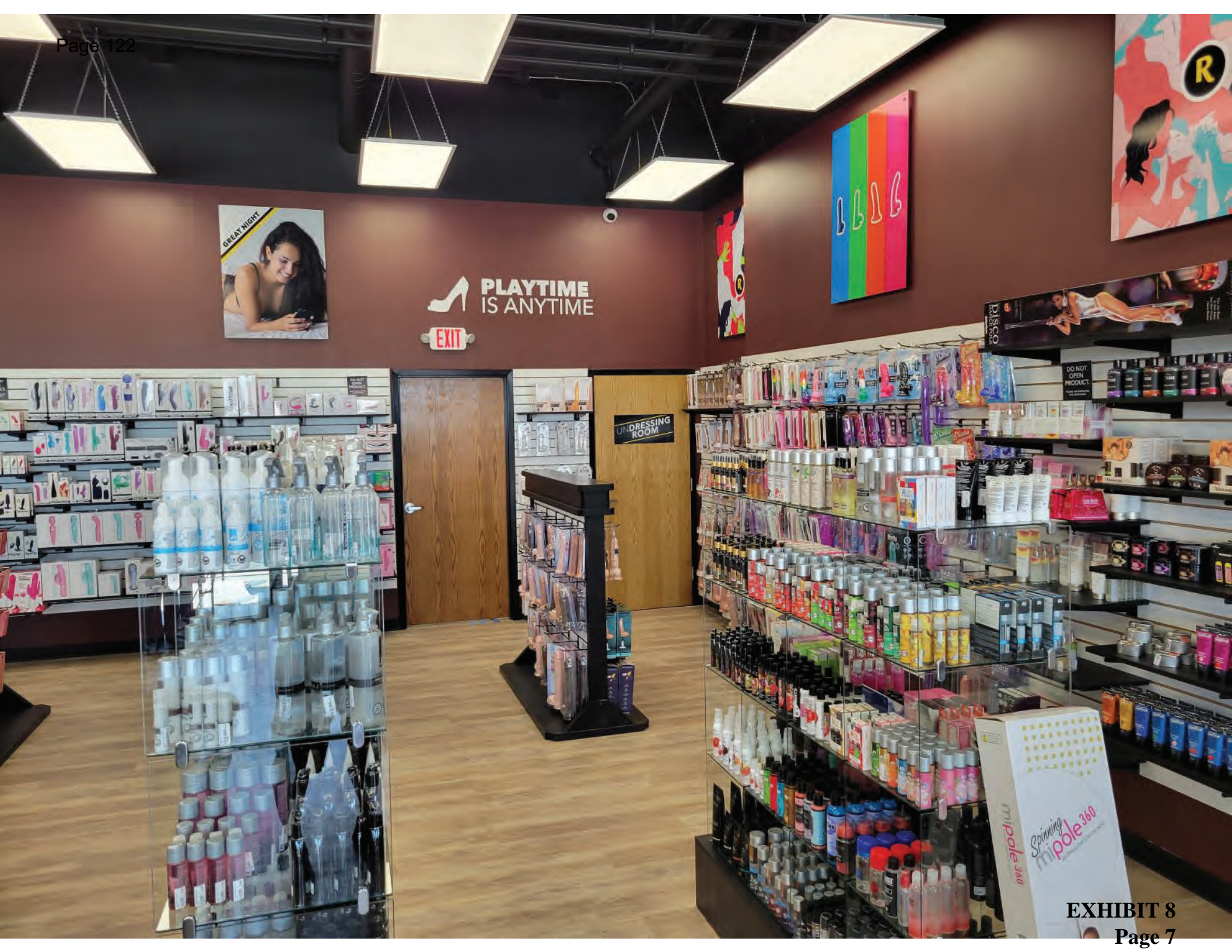
Fax: 888-235-6491

Email: jporter@romantixexchange.com

Website: <http://www.romantix.com>

Address: 4655 N Colorado Blvd Denver CO 80216

Confidentiality Notice: This email, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited.









YOUR LOVE LIFE
IS OUR BUSINESS

MAKE TONIGHT
ALL ABOUT YOU



NEED HELP?
WE HAVE GREAT IDEAS!

PAIN PLEASURE



LOVE LIFE
OUR BUSINESS

E LIFE
BUSINESS

PLAYTIME
IS ANYTIME

MAKE TONIGHT
ALL ABOUT YOU





YOUR PLEASURE IS OUR PASSION

ROMANTIX

WHAT HAVE YOU DONE FOR YOURSELF LATELY?

NEED HELP? WE HAVE GREAT IDEAS!

RETURN POLICY

ALL ITEMS OF THE STORE ARE OPEN TO RETURN

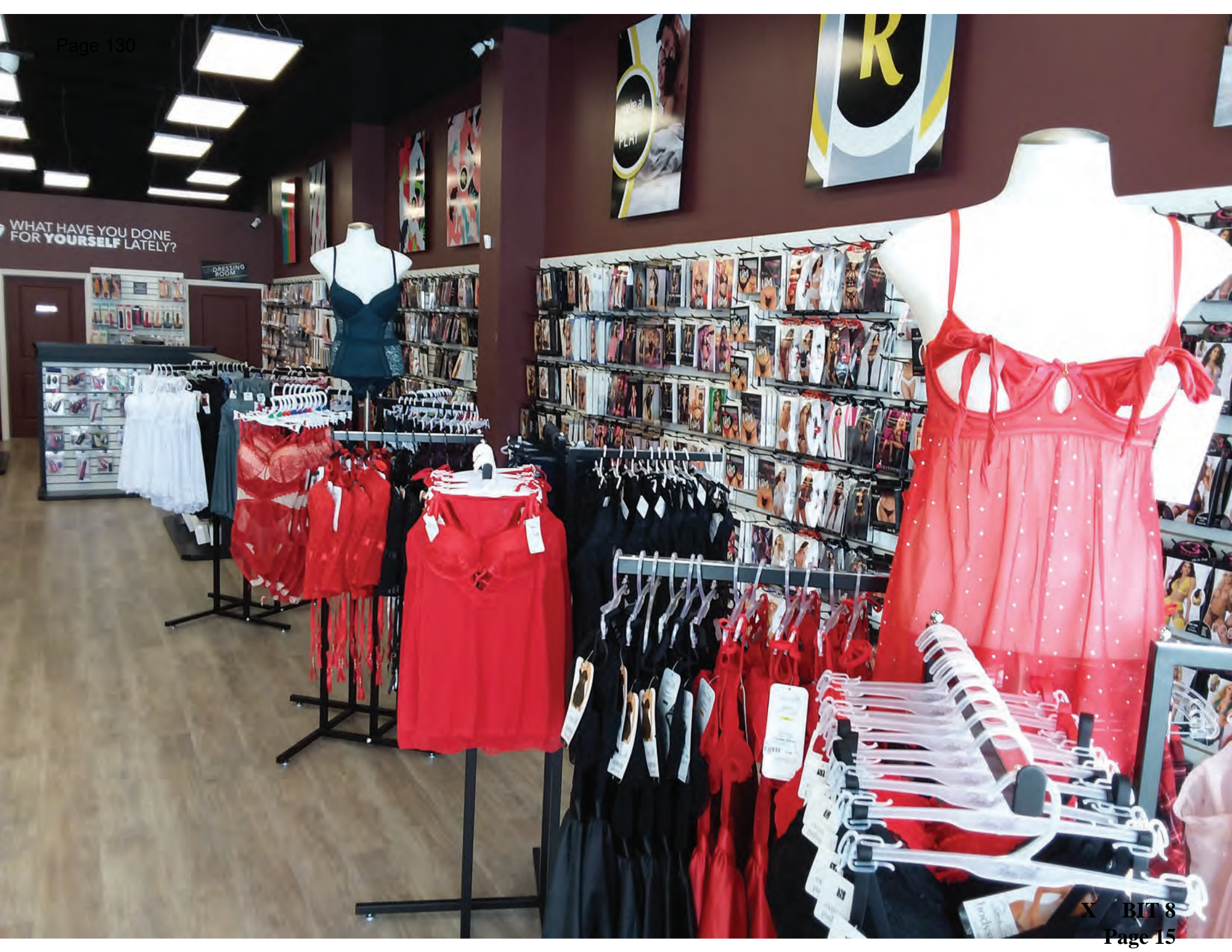


ROMANTIX

WHAT HAVE YOU FOR YOURSELF L

WHAT HAVE YOU DONE
FOR YOURSELF LATELY?

DRESSING
ROOM







WHAT HAVE
YOU DONE
FOR **YOURSELF**
LATELY?

ROMANTIX



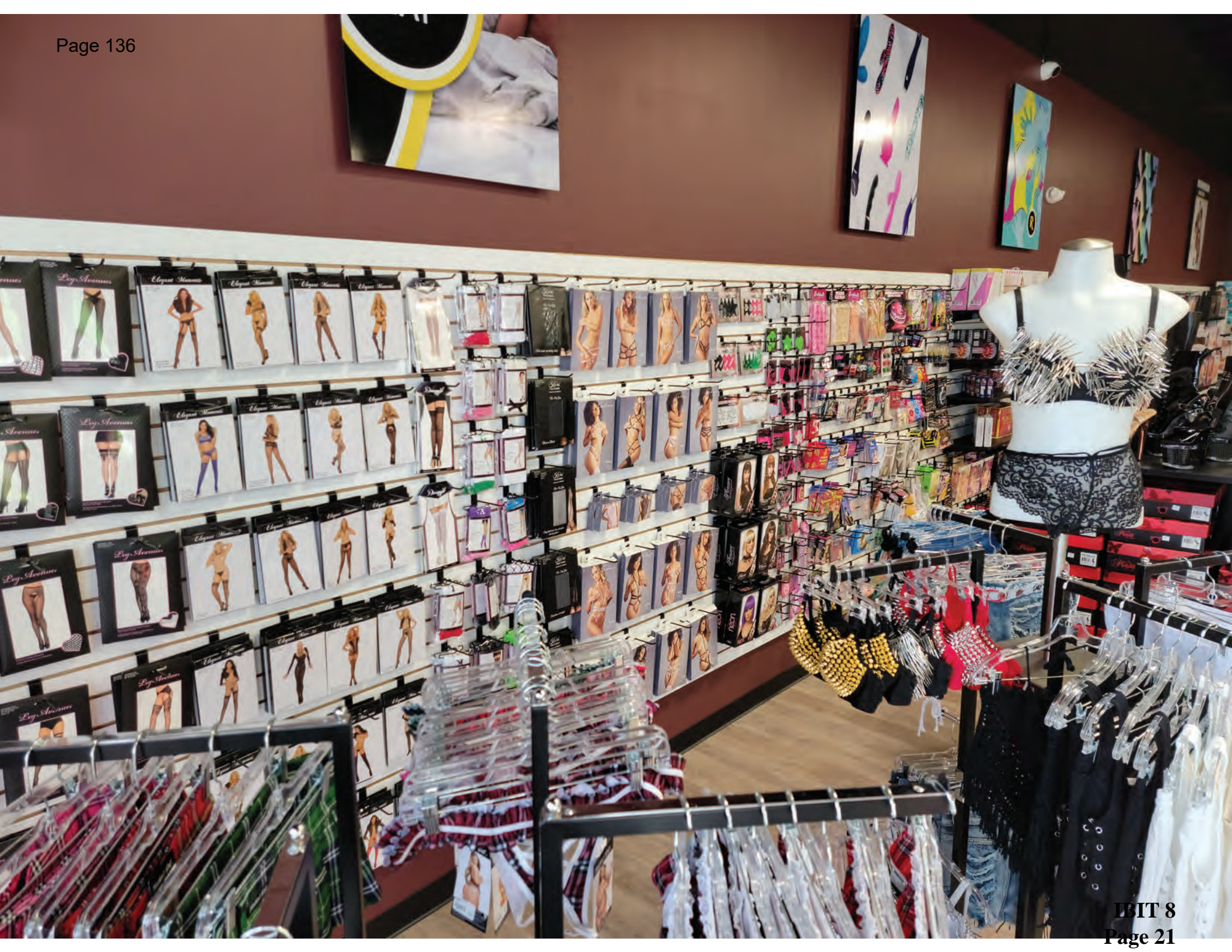




PLAYTIME IS ANYTIME



PANTY SALE
BUY 2 GET 1
FREE









YOUR PLEASURE
IS OUR PASSION

ROMANTIX

PLAYTIME
IS ANYTIME

EXIT

YOUR LOVE LIFE
IS OUR BUSINESS

WHO DO YOU
WANT TO BE
TONIGHT?

ROMANTIX

YOUR PLEASURE
IS OUR PASSION

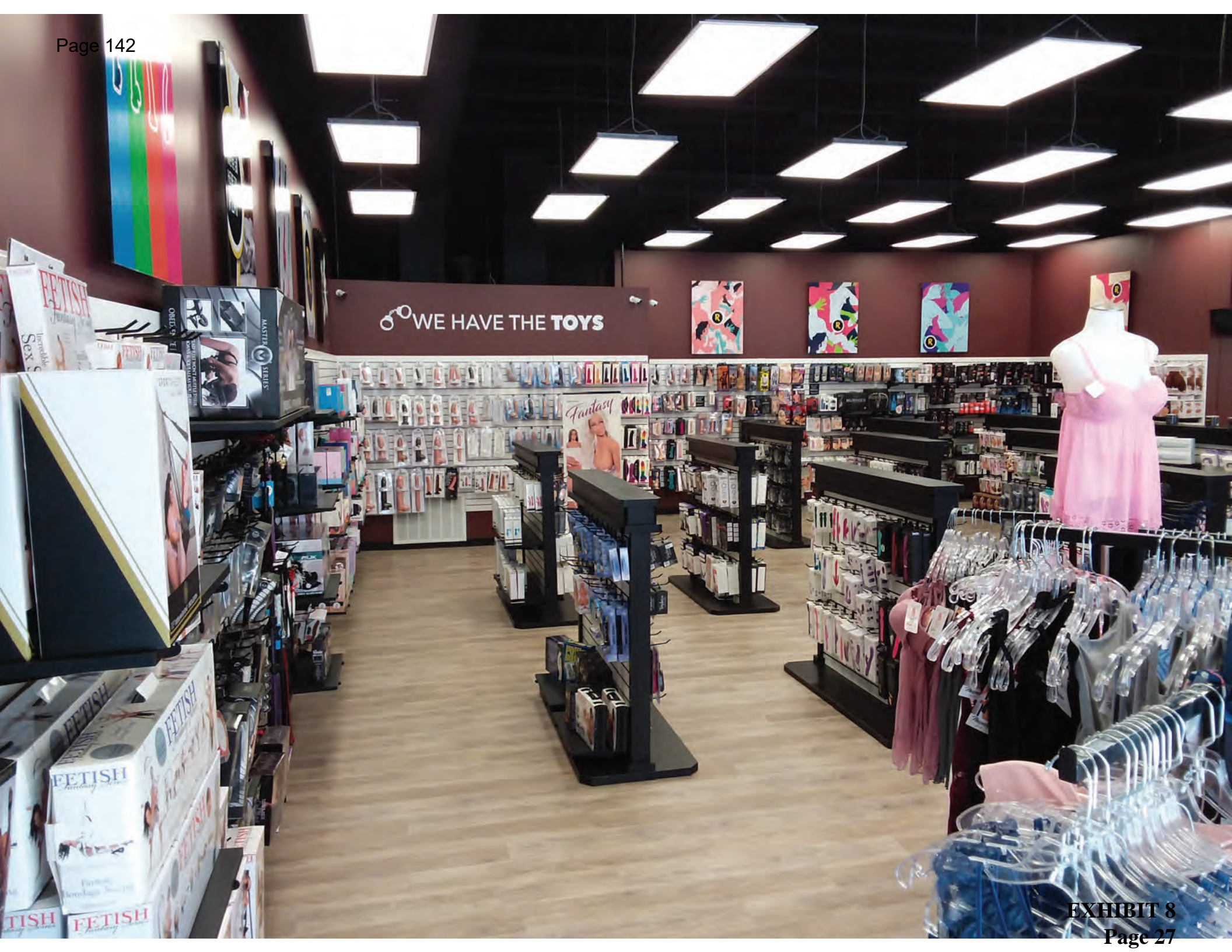
PAIN, PLEASURE
AND EVERYTHING IN BETWEEN

MAKE TONIGHT
ALL ABOUT YOU

WHAT HAVE YOU DONE
FOR YOURSELF LATELY













ROMANTIX

PANTY SALES!
BUY 3 GET 1
FREE!

35%
DYNAMO
DELAY



From: [Nicole Crutchfield](#)
To: "[Joshua Porter](#)"
Subject: RE: Romantix Fargo
Date: Monday, August 29, 2022 3:18:33 PM

Yes, a little closer to 5:00 PM CST (my time) or later.

From: Joshua Porter <joshp721@gmail.com>
Sent: Monday, August 29, 2022 2:19 PM
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>
Subject: Re: Romantix Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hi Nicole,

Thank you for the confirmation.
Do you have time for a quick call this afternoon?

Regards,
Josh Porter
480 266 6888

On Mon, Aug 29, 2022 at 9:03 AM Nicole Crutchfield <ncrutchfield@fargond.gov> wrote:

Thanks Josh
I did get this. I will follow up.

From: Joshua Porter <joshp721@gmail.com>
Sent: Monday, August 29, 2022 9:55 AM
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>; Romantix <jporter@romantixexchange.com>
Subject: Romantix Fargo

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning Nicole,

I am writing to you from my gmail account as we have been having significant issues emailing through my romantix account.

I would like to request the planning department's interpretation of "substantial or significant".
The code fails to define those terms and without an official interpretation from planning, the city has made it impossible for Romantix to determine compliance

with such a vague standard.

Please provide us with a "percentage" of "stock in trade" that planning considers "substantial or significant" to allow us an opportunity to amend our business plans and resubmit our application.

I've also done some additional research this weekend leading to a question about Enchantasys.

Enchantasys on 45th St. in Fargo is about 300 feet from Sickies Garage Burgers and Brew.

Sickies sells alcoholic beverages for on premises drinking. Clearly a zoning violation if Enchantasys is an adult bookstore.

If Enchantasys is not an adult bookstore then how are we being labeled as an adult bookstore?

It is possible Enchantasys was open before Sickies opened, I'm not certain.

However that location was an Old Chicago for many years before it became Sickies so the same question exists.

Thank you and I look forward to speaking with you later today.

Regards,

Josh Porter

480 266 6888

September 7, 2022

Josh Porter
Romantix, Inc.
4655 Colorado Blvd
Denver, CO 80216-3217

Gill's Investment LTD
2435 Parkview Dr. S
Fargo ND, 58104

RE: Change of Use Permit for 74 Broadway, Romantix Inc.

Dear Mr. Gill and Mr. Porter,

The Change of Use Permit application that was filed by Gill Investments LTD on August 15th, 2022 was denied by the Planning Department. The proposed use does not meet the Downtown Mixed Use Zoning Use Regulations as defined by the Land Development Code, Article 20-04 (20-0401 Use Table); and Article 20-12.

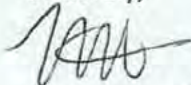
An Adult Bookstore is defined in Fargo Municipal Code § 20-1202. Based on the application and additional information provided for consideration of the application, including product and sales information, store layout, admission limited to persons 18 years of age and older, as well as other relevant information, I made the decision that the definition of Adult Bookstore "stock in trade" applies to the use, and that the primary business purpose consisting of adult products is substantial or significant. The City does not employ a numerical percentage, but rather I took the totality of the circumstances into account. Therefore, the use is precluded by the Use standards provided in the ordinance, and as the Zoning Administrator I denied the proposed use at 74 Broadway.

If you wish to appeal this decision, please submit your notice of appeal by using the attached application form submitted to the Planning Department within 10 days of this notice to you but no later than September 20, 2022. The form can also be downloaded from here:

https://download.fargond.gov/1/application_appeal_of_administrative_decision_2018.pdf

The Board of Adjustment will hear your appeal on September 27th at 9:00 AM. Please let us know if you have any questions.

Sincerely,



Nicole Crutchfield, AICP
Planning Director



cc: Nancy Morris, City Attorney
Shawn Ouradnik, Inspections Director



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 (<i>printed</i>): _____
Address: _____ _____
Primary Phone: _____
Alternative Phone: _____
Fax: _____
Email: _____

Representation Information (<i>if applicable</i>)
Name (<i>printed</i>): _____
Address: _____
Company _____
Primary Phone: _____
Alternative Phone: _____
Fax: _____
Email: _____
<input type="checkbox"/> Same as property owner

Location of property involved in the appealed decision (<i>if applicable</i>)
Address: _____
Legal Description (<i>attach separate sheet if more space is needed</i>): _____ _____

Item for Appeal (<i>attach separate sheet if more space is needed</i>)
_____ _____

Reason for Appeal (<i>attach separate sheet if more space is needed</i>)
_____ _____ _____ _____ _____ _____ _____



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*): _____ Date: _____

Representative (*Signature*): _____ Date: _____

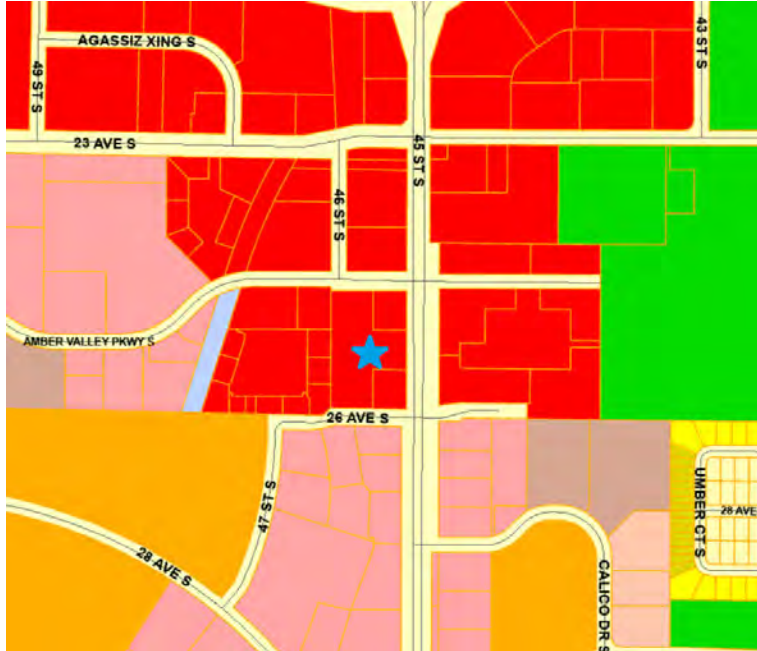
Office Use Only

Date Filed: _____ Pre-Application Meeting Date: _____

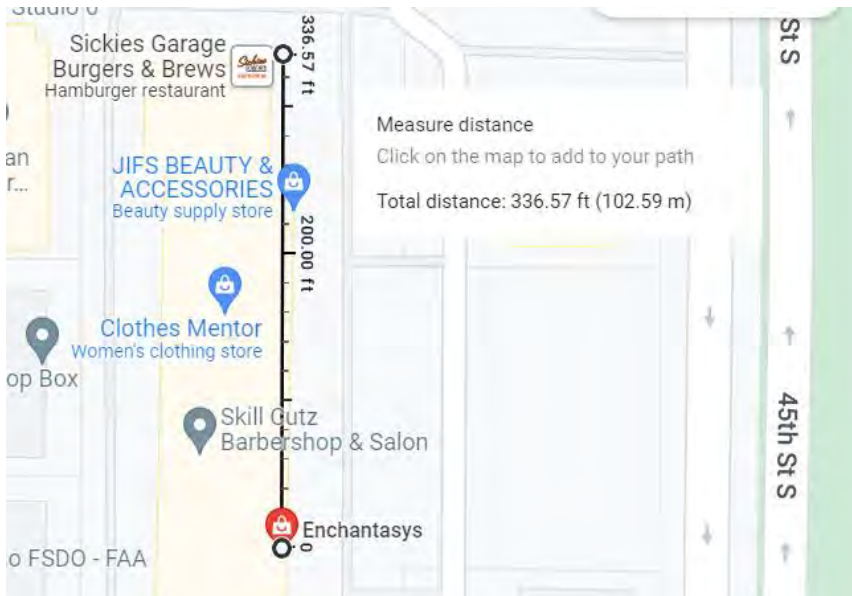
Application Complete: Yes No Reviewed By: _____

2551 45th St South
Fargo ND 58104

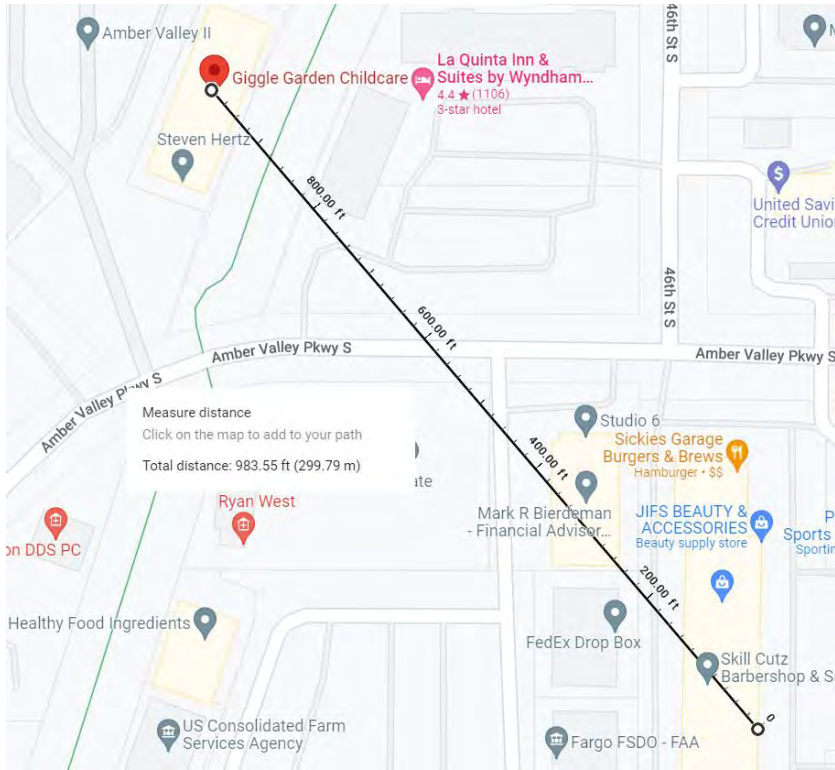
According to the Fargo Interactive Zoning Map the store is located in Zone GC



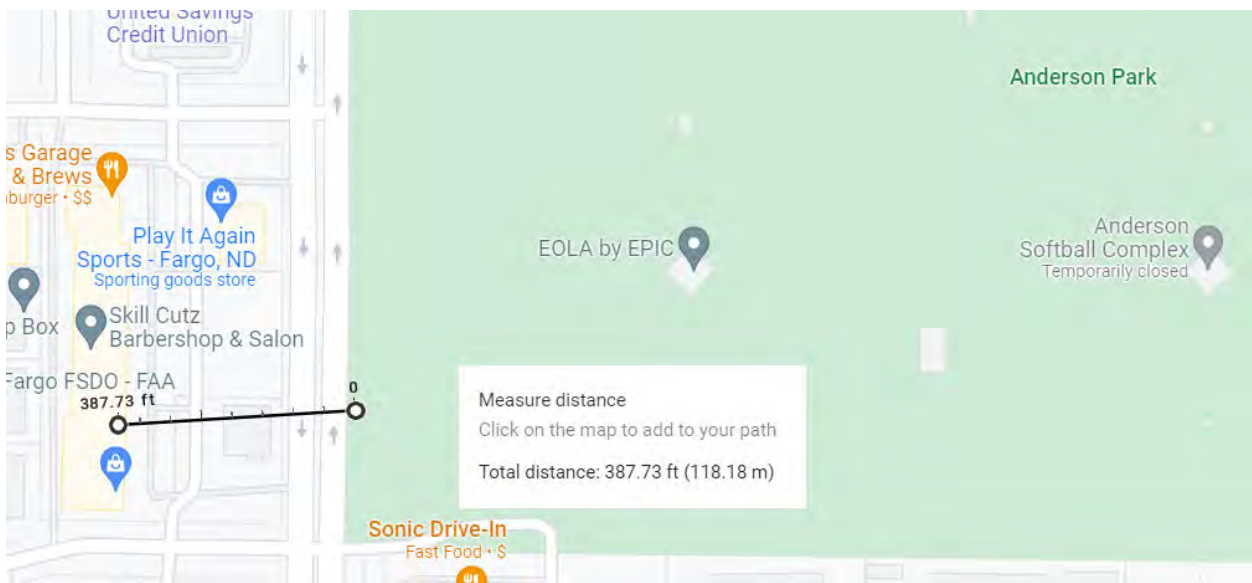
Using Google Maps we can measure the distance of 336 feet from their store to an establishment that sells alcohol.



In addition, they're less than 1,000 feet from a children's day care.



Anderson Park is directly across the street from the store. Less than 400ft away.



DVDs, Magazines, Cock Rings, Male Masturbators, and Dolls



Assorted Bullets and Vibrators



Butt plugs with fur tails attached



Assorted dildos, vibrators, penis pumps, and BDSM items



Lotions, accessories candy and other enhancement/ stimulant products.

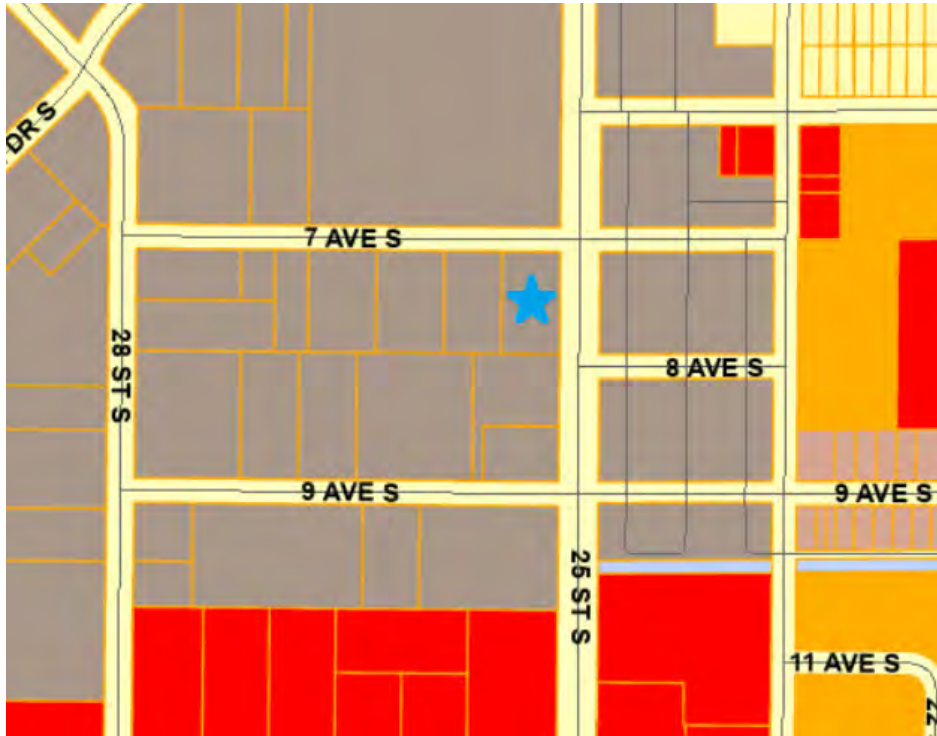


Bachelorette party products

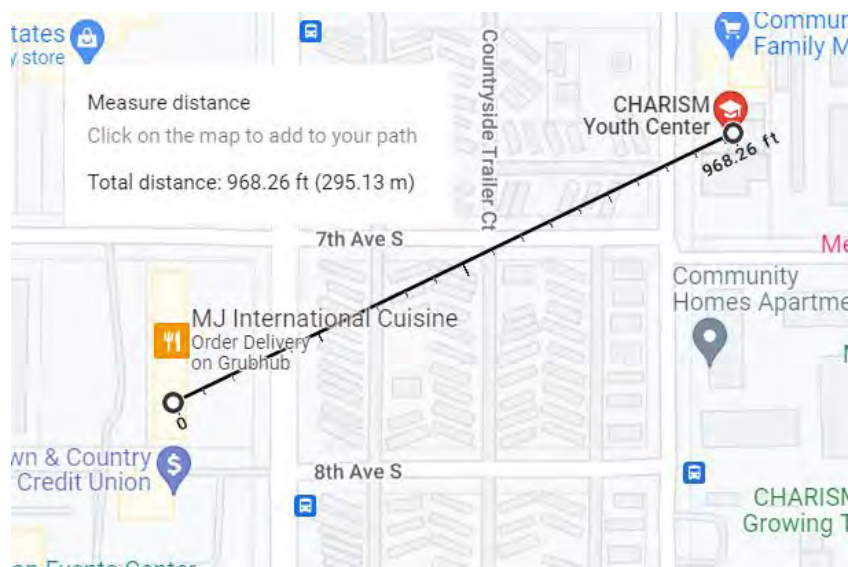


2512 7th Ave S
Fargo, ND 58103

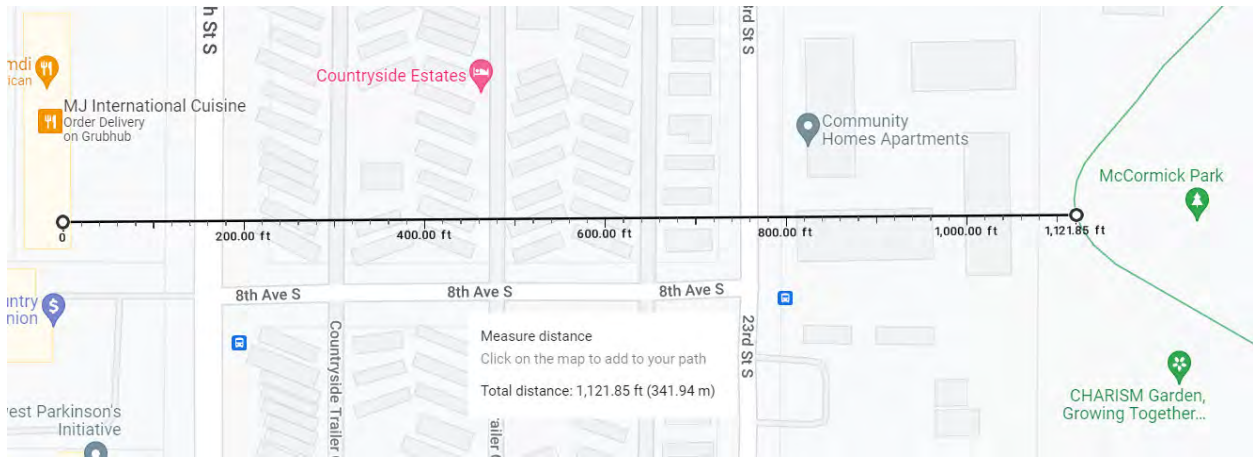
According to the Fargo Interactive Zoning Map the store is located in Zone LI
(Limited industrial district)



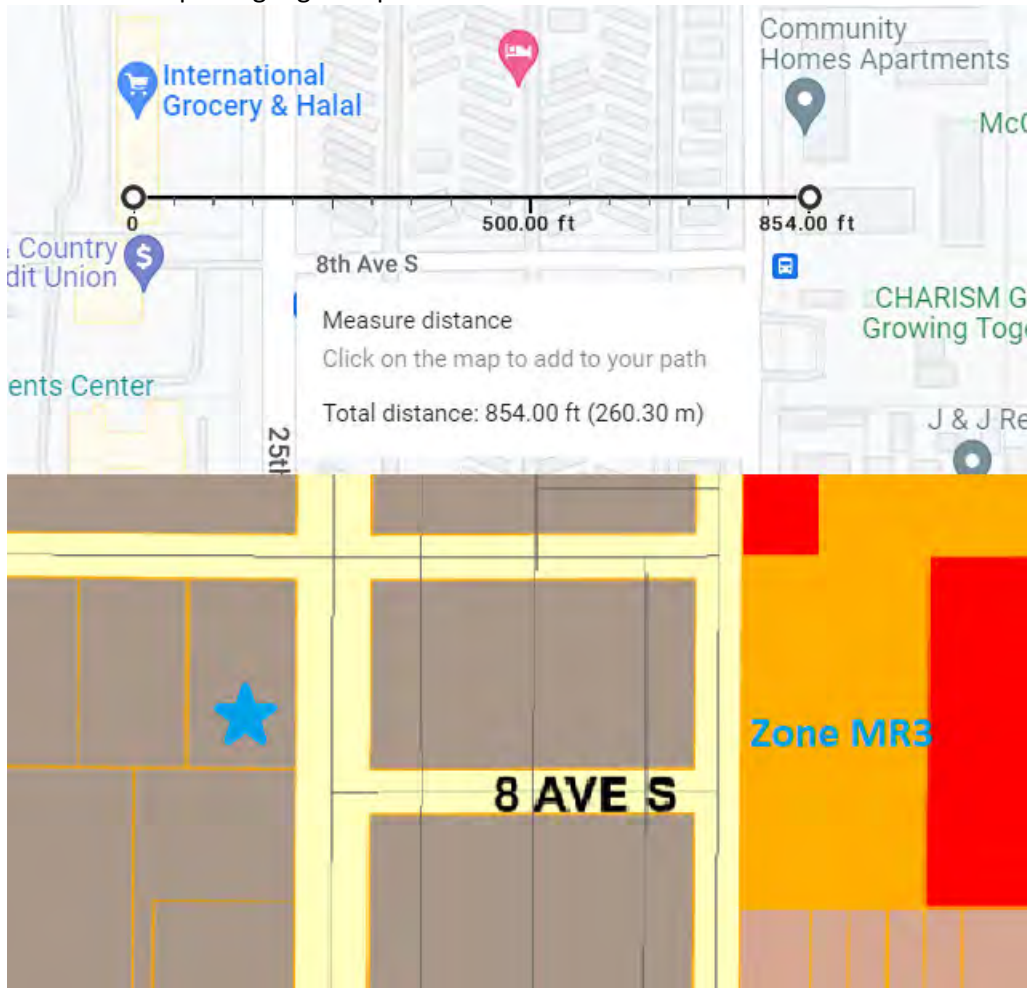
The store is less than 1,000 feet from the Charisma Youth Center. This is a daycare center for 36 children.



The store is located less than 1200 feet from the McCormick Park



The store is located less than 900 ft from an area zoned MR3. In the image below I'm showing both the interactive map and google map to show both the zones and distance.



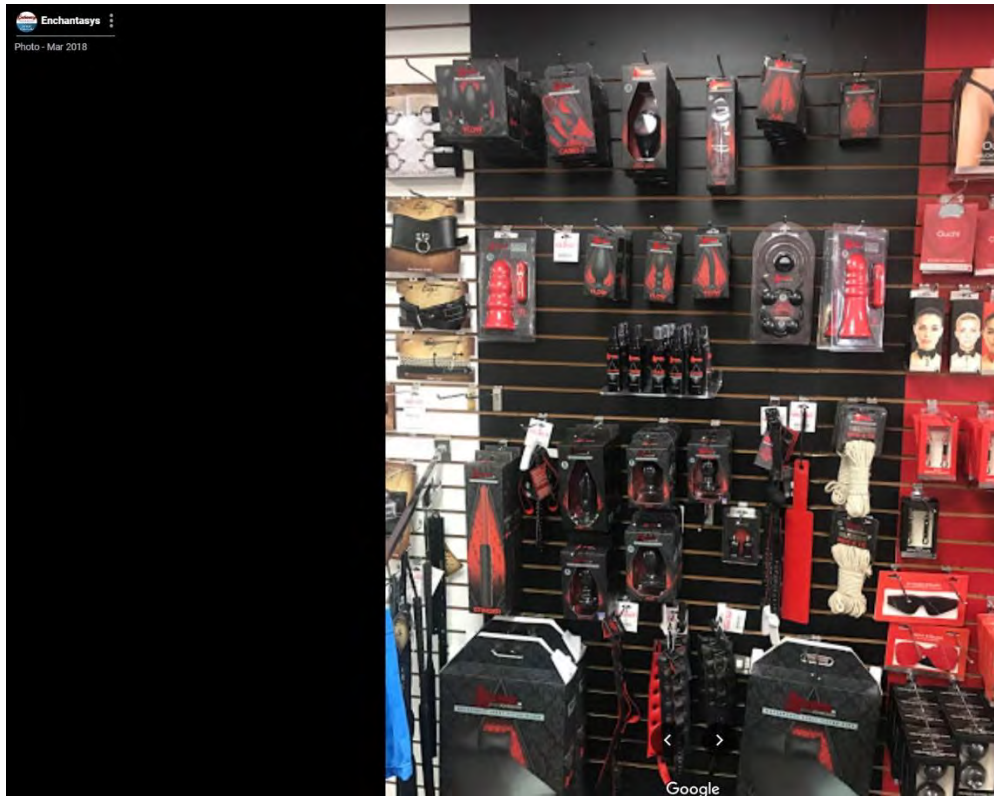
Lotions, lubricants, enhancement / stimulant products, candy, etc...



DVDs, Magazines, Male Masturbators, Bullets, Vibrators, Sex Swings, Stripper Poles



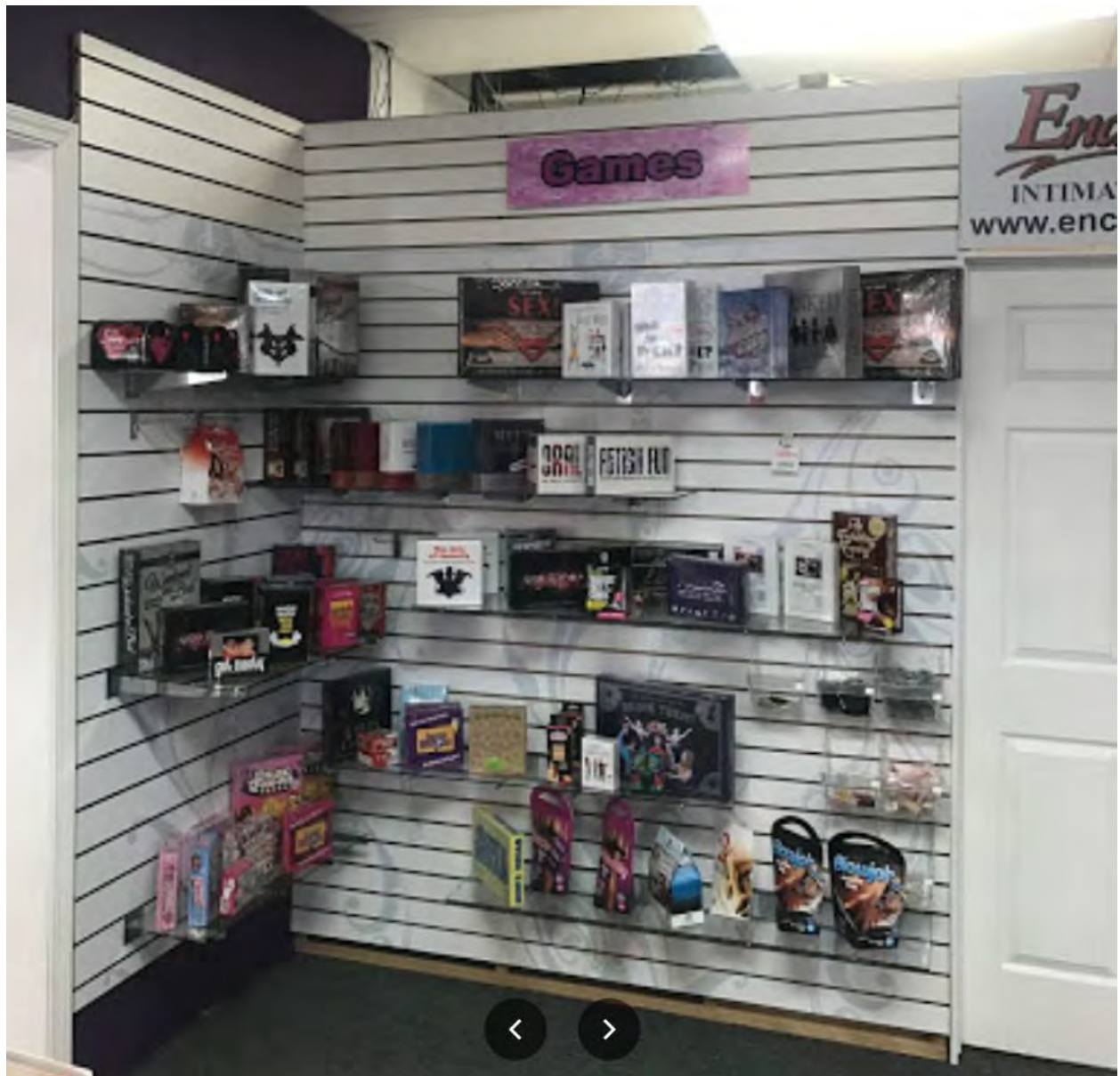
Assorted BDSM items.



Vibrators, Dildos, Rabbits, Packers



Adult Board Games





October 17, 2022

To: Board of City Commissioners
Fr: Michael Redlinger, Interim City Administrator
Re: Recommendation to Appoint Solid Waste Utility Director

Background: The City of Fargo recently advertised, recruited, and screened prospective candidates for the position of Solid Waste Utility Director. A total of 13 applications were received for the position. Virtual interviews were held on September 20, 2022 with four (4) candidates. Following this initial screening, three (3) candidates were invited to participate in an in-person interview with the City's selection committee. The in-person interviews were held on September 30, 2022.

Selection Committee: The selection committee formed to interview the candidates consisted of the following members:

- Jamie Bullock, Accountant
- Ryan Gramm, Solid Waste Equipment Operator II
- Troy Hall, Water Utility Director
- Jim Hausauer, Water Reclamation Utility Director
- Denise Kolpack, City Commissioner
- Michael Redlinger, Interim City Administrator
- Steve Sprague, City Auditor

Human Resources Department Facilitators

- Jill Minette, Human Resources Director
- Camila Van Dyke, Human Resources Manager

Selection Committee Recommendation: The September 30, 2022 in-person interview was scored independently by each selection committee member. Candidates were presented leadership, technical, and behavioral questions from the following areas:

Professional Experience

Technical Skills

Leading/Managing Change

Vision/Leadership

Motivation

Renewable Energy

Program & Personnel Management

Diversity, Equity, & Inclusion

Following the interview process, the selection committee recommends the appointment of Mr. Scott Olson to the position of Solid Waste Utility Director. City staff will introduce the Solid Waste Utility Director-designee at the October 17th meeting and request consideration of his appointment to the position.

Recommended Action: Approve the appointment of Mr. Scott Olson to the position of Solid Waste Utility Director.



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Denise Kolpack, City Commissioner
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.715-4895 | Fax: 701.476.4136
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: COMMISSIONER DENISE KOLPACK

DATE: OCTOBER 17, 2022

SUBJECT: FARGO YOUTH INITIATIVE (FYI)

Since its inception in 2012 the Fargo Youth Initiative (FYI) have met monthly (sometimes more) to discuss opportunities and issues facing young people in our community. These smart, caring and committed young leaders represent the public and private schools in Fargo.

Below you will find a list of interested participants for this year. They were selected using the four values as criteria: Leadership, Teamwork, Responsibility and Drive to Improve the Community. I am recommending they be appointed as the Fargo Youth Initiative members for the 2022-2023 academic year.

I appreciate your support of the Fargo Youth Initiative and the inclusion of new and young voices in the public process.

RECOMMENDED MOTION: To appoint the following to serve as Fargo Youth Initiative members for the 2022-2023 academic school year.

Returning Members: Abhijna Kavasseri (North-11), Anna French (North-12), Natalie Evensen (South-12), Madeline Abbott (Shanley-11), Jadyn Chakua (North-10)

New Members: Michael Vasichek (South-12), Patrick Shen (Davies-11), Angel Mochage (Davies-11)

(40)

October 13, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: Project #FM-15-J – 1458 South River Road

Honorable Commissioners:

At your last Commission meeting, we presented five alternatives for flood protection at 1458 South River Road, which is listed on the National Register of Historic Places. The presentation was for informational purposes only and no action was requested at the meeting to allow for time to review the alternatives. To assist the review of the alternatives, I have included the matrix that was presented at your meeting. This matrix includes all five alternatives and identifies some factors that can be used when comparing the alternatives to each other.

Staff does not intend to present any additional information at your upcoming Commission meeting but will be available for any questions there may be on any alternatives previously presented.

Respectfully,



Nathan Boerboom
Division Engineer

Attachment

C: Brenda Derrig, City Engineer
John & Sherri Stern

Option	Option Description	Structure is Preserved	Structure Maintains Historic Designation	Structure is Flood Protected	Design Complexity (0 = Low, 3 = High)	Construction Complexity (0 = Low, 3 = High)	Future Operation and Maintenance	Total Estimated Cost (2023\$)*
A	Full Property Acquisition & Structure Removed	N	N	N/A	0	0	Low	\$1.1M
B	Full Property Acquisition & Structure Relocated	Y	N	Y	0	2	Low	\$1.8M
C	Full Property Acquisition & Structure Reconstruction	N	N	Y	0	0	Low	\$2.1M
D	Floodwall Construction (River Side of Structure)	Y	Y	Y	3	3	High	\$2.9-\$4.8M
E	Floodwall Construction (Street Side of Structure)	Y	Y	N	2	1	High	\$1.1M

*Previously completed cost estimates have been increased due to inflation. Increases based on 8% for 2020, 8% for 2021 & 20% for 2022.



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Arlette Preston, City Commissioner
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: CITY COMMISSIONER ARLETTE PRESTON

DATE: OCTOBER 10, 2022

SUBJECT: PUBLIC COMMENT PERIOD

An individual who owns a business in the city limits of Fargo but does not reside inside the city limits tried to register to address the City Commission during the Public Comment Period on a topic of concern to their business. They were turned away since they are not residents.

It's not clear how the requirement was generated which excludes property owners and/or business owners inside the City. I am requesting consideration of the following:

RECOMMENDED MOTION: To allow individuals who own property or a business inside Fargo's boundaries to address the City Commission during the Public Comment Period.



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Arlette Preston and John Strand, City Commissioners

Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: CITY COMMISSIONERS ARLETTE PRESTON AND JOHN STRAND

DATE: OCTOBER 7, 2022

SUBJECT: DEPUTY MAYOR

The City Charter states the Fargo City Commission is to select the Deputy Mayor: "At the first meeting of the new governing body after each biennial election, the governing body shall elect one of its members as deputy mayor."

At the first meeting of this new Commission, a motion was passed to select Commissioner Piepkorn as our Deputy Mayor.

Conduct appropriate for elected officials includes respect for each other and for the community residents whom we represent. Commission members are not to be hostile, degrading or defamatory toward other members, toward members of the staff or to members of our community. Derogatory and abusive treatment toward others will not be tolerated by this body.

As a governing body, the Fargo City Commission has the obligation, indeed the accountability, to police our members' behaviors. With this in mind, the following resolution is being proposed:

RECOMMENDED MOTION: To rescind Commissioner Dave Piepkorn as Deputy Mayor.



September 28, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 217 15 Ave N as submitted by Stephen and Cheryl Hoffman. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$212 with the City of Fargo's share being \$36.

Sincerely,

A handwritten signature in black ink that reads "Mike Splonskowski".

Mike Splonskowski
City Assessor

nlb
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Blk 4, Lot 11, 12 & 13, Hogans

2. Address of Property 217 15 Ave N

3. Parcel Number 01-1280-00890-000

4. Name of Property Owner Stephen & Cheryl Hoffman Phone No. 701-429-8556

5. Mailing Address of Property Owner 217 15 Ave N

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Bedroom reno, change to master bath & closet

7. Building permit No. 2202-0102 8. Year built (residential property) 1949

9. Date of commencement of making the improvements 2-15-2022


10. Estimated market value of property before the improvements \$ 297,600.00

11. Cost of making the improvement (all labor, material and overhead) \$ 70,232.37

12. Estimated market value of property after the improvements \$ _____


Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant  Date 9-27-2022

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do do not meet the qualifications for exemption for the following reason(s): _____

Assessor/Director of Tax Equalization  Date 9-30-2022

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved Denied

Approval is subject to the following conditions: _____

Exemption is allowed for years 20___, 20___, 20___, 20___, 20___.

Chairperson _____ Date _____



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September 27, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 4834 Rose Creek Pkwy S as submitted by James and Jean Jorgenson. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$236 with the City of Fargo's share being \$40.

Sincerely,

A handwritten signature in black ink that reads "Mike Splonskowski".

Mike Splonskowski
City Assessor

nlb
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Lot 32 Block 1 Rose Creek 4th

2. Address of Property 4834 Rose Creek Pkwy S

3. Parcel Number 01-2485-00320-000

4. Name of Property Owner James & Jean Jorgenson Phone No. 701-371-1710

5. Mailing Address of Property Owner 4834 Rose Creek Pkwy S

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Master Bath remodel - convert from full bath to 3/4 bath

7. Building permit No. 21010584 8. Year built (residential property) 1996

9. Date of commencement of making the improvements 03/26/2021

10. Estimated market value of property before the improvements \$ _____

11. Cost of making the improvement (all labor, material and overhead) \$ 18,000

12. Estimated market value of property after the improvements \$ _____

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant Jean Jorgenson **Date** 09/21/22

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do do not meet the qualifications for exemption for the following reason(s): _____

Assessor/Director of Tax Equalization Willa Johnson Date 9-30-2022

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved Denied

Approval is subject to the following conditions: _____

Exemption is allowed for years 20____, 20____, 20____, 20____, 20____.

Chairperson _____ Date _____



September 27, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2810 1st St N as submitted by Kenneth and Diana Thomas. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$236 with the City of Fargo's share being \$40.

Sincerely,

Handwritten signature of Mike Splonskowski in black ink.

Mike Splonskowski
City Assessor

nlb
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Blk 2, Lot 12, Asp

2. Address of Property 2810 1 St N

3. Parcel Number 01-0070-00310-000

4. Name of Property Owner Kenneth & Diana Thomas Phone No. 701-200-2667

5. Mailing Address of Property Owner 2810 1 St N

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Remodel Kitchen

7. Building permit No. 2112-0295 8. Year built (residential property) 1972

9. Date of commencement of making the improvements January 1st, 2022

10. Estimated market value of property before the improvements \$ 275,100.00

11. Cost of making the improvement (all labor, material and overhead) \$ 58,980.43

12. Estimated market value of property after the improvements \$ 334,080.43

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant Kenneth Thomas / Diana Thomas Date 9/26/22

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do do not meet the qualifications for exemption for the following reason(s): _____

Assessor/Director of Tax Equalization [Signature] Date 9-30-2022

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved Denied

Approval is subject to the following conditions: _____

Exemption is allowed for years 20 __, 20 __, 20 __, 20 __, 20 __.

Chairperson _____ Date _____



September 28, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2973 Peterson Pkwy N as submitted by Greg and Nancy Bjerke. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$376 with the City of Fargo's share being \$64.

Sincerely,

A handwritten signature in cursive script that reads "Mike Splonskowski".

Mike Splonskowski
City Assessor

nlb
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Blk 4, Lot 18, Less Foll, Edgewood Farms

2. Address of Property 2973 Peterson Pkwy N

3. Parcel Number 01-0735-00750-000

4. Name of Property Owner Greg & Nancy Bjerke Phone No. 701-793-7800

5. Mailing Address of Property Owner 2973 Peterson Pkwy N

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Remodel main floor bath, frame in new bathroom in basement

7. Building permit No. 2202-0302 8. Year built (residential property) 1990

9. Date of commencement of making the improvements 1-15-22

10. Estimated market value of property before the improvements \$ 571,400.00

11. Cost of making the improvement (all labor, material and overhead) \$ 98,000.00

12. Estimated market value of property after the improvements \$ _____

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant [Signature] Date 9-28-22

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do not meet the qualifications for exemption for the following reason(s): _____

Assessor/Director of Tax Equalization [Signature] Date 9-30-22

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved Denied

Approval is subject to the following conditions: _____

Exemption is allowed for years 20____, 20____, 20____, 20____, 20____.

Chairperson _____ Date _____