



PLANNING AND DEVELOPMENT

200 Third Street North

Fargo, North Dakota 58102

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MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planner *AN*
DATE: October 18, 2016
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, October 25, at 9:00 a.m. in the City Commission Room at Fargo City Hall. If you are not able to attend, please contact staff at 241-1474 or planning@cityoffargo.com. Thank you.

BOARD OF ADJUSTMENT
Tuesday, October 25, 2016 9:00 a.m.
City Commission Room
AGENDA

1. Approve Minutes of September 27, 2016 Meeting
2. New Business
 - a) Variance Request – 1005 27 Street North
Request for a variance of Sections 20-0403(B) and 20-0501 of the LDC. The requested variance is to allow a proposed 8-foot-tall fence to encroach 3 feet into the required 3-foot fence setback and 5 feet into the required 5-foot interior-side setback within the SR-3 (Single-Dwelling Residential) zoning district.
3. Other Business
4. Adjournment

Board of Adjustment meetings are broadcast live on cable channel TV Fargo 56 and can be seen live by video stream on www.cityoffargo.com/streaming. They are rebroadcast each Tuesday at 9:00 a.m. for one month following the meeting.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Planning Office at 241-1474 or TDD at 241-8258. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.



BOARD OF ADJUSTMENT MINUTES

Regular Meeting:

Tuesday:

September 27, 2016

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 9:00 o'clock a.m., Tuesday, September 27, 2016.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Russell Ford-Dunker, Michael Love

Absent: Mark Lundberg, Mike Mitchell

Chair Wendel-Daub called the meeting to order.

Item 1: Approve Order of Agenda

Member Love moved the Order of Agenda be approved as presented. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

Item 2: Approval of Minutes: Regular Meeting of August 23, 2016

Member Ford-Dunker moved the minutes of the August 23, 2016 Board of Adjustment meeting be approved. Second by Member Love. All Members present voted aye and the motion was declared carried.

Before proceeding with Item 3, Member Love noted a potential conflict of interest regarding the variance request being heard today. Chair Wendel-Daub asked City Attorney Erik Johnson to explain the law pertaining to these types of potential conflicts.

Erik Johnson reviewed the State of North Dakota's statutory provisions and the procedures the Board would follow when addressing potential conflicts of interest. He explained the Board will need to vote on whether to waive any conflict of interest, and to therefore allow Member Love to participate in the discussion and to vote. Mr. Johnson also noted that with 4 of the 5 Board Members present today, all Members would be required to vote in order to proceed with the variance request or this application would need to be rescheduled to a future Board of Adjustment meeting.

Member Ford-Dunker moved to waive a conflict of interest and to approve Member Love be allowed to vote on Item 3a. Second by Member Boreen. Upon call of the roll Members Boreen, Ford-Dunker, and Wendel-Daub voted aye. Absent and not voting: Members Lundberg and Mitchell. The motion was declared carried.

Before proceeding with Item 3, Chair Wendel-Daub addressed the applicant explaining with 4 of the 5 Board Members present and the requirement of 4 affirmative votes for a motion to pass in favor his request, the applicant has the option to reschedule. Applicant Jeremy Magelky stated he would like the meeting to proceed.

Item 3: New Business

a) Variance Request – 3101 Peterson Parkway North: Request for a variance of Section 20-0501 of the Land Development Code (LDC). The requested variance is to allow construction of an accessory building that would encroach into the required interior-side setback areas within the SR-2, Single-Dwelling Residential zoning district: DENIED

Assistant Planner Barrett Voigt presented the staff report and reviewed the criteria used during staff's analysis of the request. Mr. Voigt stated staff is recommending denial as review criteria a and c have not been met.

Board discussion ensued with questions regarding any special code requirements in relation to the close proximity to the existing house, and the type of foundation to be laid.

Plan Reviewer Chris Rose, Inspections Department, addressed the questions and reviewed the specific code requirements that must be met.

Applicant Jeremy Magelky spoke on behalf of the application. Mr. Magelky referred to a letter included in the packet, from a neighbor on the west side of the property, who is in favor of the proposed building.

Further discussion by the Board concerned other possible locations on the property for placement of the building; decreasing the size of the building; and removal of existing trees.

Member Ford-Dunker moved the findings of staff be accepted and the variance to allow a shed to be constructed within the required interior-side setback in the SR-2, Single-Dwelling Residential zoning district be denied, on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met. Second by Member Boreen. Upon call of the roll Members Love, Boreen, and Ford-Dunker voted aye. Member Wendel-Daub voted nay. Absent and not voting: Members Lundberg and Mitchell. The motion was declared carried.

Item 5: Other Business

No other business was discussed.

Item 6: Adjournment:

Member Love moved to adjourn the meeting at 9:34 a.m. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.

CITY OF FARGO
Board of Adjustment
Variance Staff Report

Item No: 2.a	Date: October 14, 2016
Address: 1005 27 Street North	
Legal Description: Lots 14, Block 15, College 2 nd Addition	
Owner(s)/Applicant: Brian and Dottie Schuchard	
Reason For Request: To construct a fence in the interior-side yard at a height higher than is currently permitted.	
Zoning District: SR-3, Single Dwelling Residential	
Status: Board of Adjustment Public Hearing: October 25, 2016	

SR-3 Fence Dimensional Standards	Proposed Fence Setback
Interior-Side Fence Setbacks:	Interior-Side Fence Setbacks:
Within Side Yard: 5'	Within Side Yard: 0'
Within Rear Yard: 3'	Within Rear Yard: 0'

Background:

The applicants, Brian and Dottie Schuchard, would like to construct an 8-foot-high fence along their interior-side lot line at their home, located at 1005 27th Street North, within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0403(B) of the Land Development Code (LDC) requires fences that exceed 6.5 feet in height to be set back at least 3 feet from the property line within the rear yard. In addition, fences which exceed 6.5 feet in height must comply with the interior-side setback requirement of Section 20-0501 of the LDC. Within the SR-3 zoning district, the required interior-side setback is 10 feet or 10% of the width of the lot, whichever is less. The subject property is 50 feet wide, which would therefore require an interior-side setback of 5 feet. Accordingly, the applicants are requesting a variance in order to allow the proposed 8-foot-tall fence to encroach 5 feet into the required 5-foot interior-side setback area and to encroach 3 feet into the required 3-foot fence setback area in the rear yard.

(Note: There are two ways to consider this variance request in relation to the dimensional standards of the LDC. An alternative way to view this application would be to consider this a variance from the maximum fence height restriction for fences located along property lines. Considered in this manner, the request would be for a variance in order to exceed the maximum 6.5-foot fence height limit by 1.5 feet. However, for the purposes of this staff report, the application was considered as variance of the setback requirements.)

Criteria for Approval & Staff Analysis:

§20-0914.E.1 of the LDC states that, “A variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions exist.”

- a. The requested variance arises from conditions that are unique to the subject property not ordinarily found in the same zoning district and are not a result of the owner’s intentional action;**
 Staff finds that the requested variance does not arise from conditions that are unique to the subject property. As noted in the submitted application, the applicants would like to construct an 8-foot-tall fence by adding an additional 1.5 feet to their existing 6-foot-tall fence, for the purpose of providing additional privacy from their neighbor. The applicants feel that the need for this variance arises from the lack of buildable space between the house and the northern interior-side lot line due to the location of existing

concrete steps and concrete sidewalk. Although the existing sidewalk and steps may obstruct the construction of a fence located five feet from the interior-side property line, staff has no evidence to suggest that this condition is unique to the subject property. Many houses within the SR-3 zoning district are located in close proximity to the interior-side lot lines. For example, the two houses to the north of the subject property appear to be located about 7 feet from their respective northern interior-lot lines and the house to the south appears to be located about 9 feet from its northern lot line.

Consequently, staff finds that the requested variance does not arise from conditions that are unique to the subject property not ordinarily found in the SR-3 zoning district. Staff suggests that the request for the variance arises from the applicants' desire to construct a fence along their property line that is taller than what is permitted, which is not a condition that is unique to the subject property. **(Criteria NOT satisfied)**

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

In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date, staff has received comments from the neighboring property owner to the north—the owner of the property along which the 8-foot fence is proposed to be constructed. This neighbor contends that small portions of the applicants' existing fence encroach onto his property. The neighbor informed staff that in 2014 he had hired a company to survey his property, which resulted in a finding that the applicants' old fence encroached up to 2.5 feet into his yard. The neighbor says that he had the applicants move the fence, however, he contends that they did not move the fence completely off of his property. The neighbor also stated that when the fence was moved, the fence panels were reversed so that the horizontal rails were outward facing (facing towards the neighbor's property) and the vertical pickets were inward facing. The neighbor stated that this created a safety hazard, since there were many screws protruding horizontally from the fence towards the neighbor's property. These protruding screws have since been filed off, at the direction of the City's Building Inspections Department after receiving that complaint from the neighbor. The neighbor contends that the fence adversely affects his rights because there is no room for the applicants to maintain the fence and he does not want them on his property to do so. It is staff's understanding that the applicants and the neighbor have been feuding with each other ever since the original fence was moved.

Based on information provided, staff finds that the neighboring property owner feels that he has been adversely affected by the existing fence. Accordingly, this would suggest that the proposed variance would only increase the effect on the adjacent property owner. **(Criteria NOT satisfied)**

c. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

According to the applicants, the variance is being requested in order to construct an 8-foot-tall fence. Specifically, the applicants state that the variance is needed to allow construction of the fence along the northern interior-side lot line, because the location of concrete steps and sidewalk on the north side of the home prevent the applicants from meeting the 5-foot setback requirement.

Although the existing steps and sidewalk may hinder the construction of a fence located 5 feet from the northern property line, staff suggests that the construction of an 8-foot-tall fence is not necessary for the practical and customary use of the property. In other words, although an 8-foot-tall fence may be permitted if certain dimensional standards are met, the inability to place an 8-foot-tall fence in a specific location on the property does not diminish the owners' ability to fully use the property for traditional single-family residential purposes. Accordingly, staff finds that no unnecessary physical hardship exists.

In addition, a fence up to 6.5 feet in height may be located along the interior-side property line without coming into conflict with applicable site development standards.

Therefore, staff finds that the strict application of the applicable standards does not constitute an unnecessary physical hardship because the subject property can be used for typical residential purposes without coming into conflict with applicable development standards. **(Criteria NOT satisfied)**

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

Staff has no data that would suggest an adverse effect on public health, safety or general welfare. No public health, safety or general welfare issues have been identified. **(Criteria satisfied)**

e. The variance is the minimum variance that will overcome the hardship;

As mentioned above, staff finds that there is no hardship because a 6.5-foot fence could be constructed along the property line without coming into conflict with applicable site development standards and the requested variance does not appear to arise from conditions that are unique to the subject property not ordinarily found in the same zoning district. However, if a hardship was found to exist, the proposed variance would be the minimum variance needed for the applicants to construct the 8-foot-tall fence in the location proposed by the applicants. **(Criteria satisfied)**

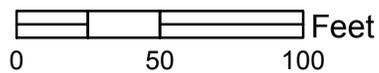
Staff Recommendation: “To accept the findings of staff and deny the requested variance to allow an 8-foot-tall fence within the interior-side setback and rear yard fence setback in the SR-3 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a, b, & c) have not been met.”



Zoning Districts

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

1005 27 Street North







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VARIANCES (§20-0914)

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of the Land Development Code (LDC) that will not be contrary to the public interest or the spirit of the LDC, where owing to special conditions, a literal enforcement of the provisions of this LDC would result in unnecessary physical (not economic) hardship to the property owner.

Variance Application Process

- 1) The application and a nonrefundable fee of \$185 are due at the time of submittal
- 2) Notice of the Public Hearing is mailed to property owners within 300 feet of the proposed site at least 15 days prior to the Hearing and published once a week for two consecutive weeks in the newspaper.
- 3) The City Planner reviews your case, develops a staff report and prepares a recommendation to the Board of Adjustment based on the Criteria for Approval, below.
- 4) Board of Adjustment meetings are scheduled as needed.

Criteria for Approval

A variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions exist.

- a. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;
- b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- c. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;
- d. The variance desired will not adversely affect the public health, safety or general welfare; and;
- e. The variance is the minimum variance that will overcome the hardship.

Acknowledgement – I hereby acknowledge that I have familiarized myself with the rules and regulations to the preparation of this submittal and that the foregoing information is true and complete to the best of my knowledge. I, the undersigned, do hereby petition the Board of Adjustment of the City of Fargo, North Dakota, to take such action as may be required by law of the City of Fargo to grant a variance pursuant to Section 20-0914 of the Land Development Code of the City of Fargo.

Owner (Signature): B. J. Dotted Scherbanke Date: 9-29-16 9:30-16
 Note: A nonrefundable filing fee of \$185.00 must be accompanied with the application at time of submittal.

Office Use Only

Date Filed: 9-30-16 Planning Contact: Aaron Nelson Nonrefundable Fee \$185.00: Cash + C.C. - Mastercard
(\$125) (\$60)



APPLICATION FOR VARIANCE

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of the Land Development Code (LDC) that will not be contrary to the public interest or the spirit of the LDC, where owing to special conditions, a literal enforcement of the provisions of this LDC would result in unnecessary physical (not economic) hardship to the property owner.

Property Owner Information:	
Name (printed):	Briana Dottie Schuchard
Address:	1005 27th St. N
Primary Phone:	701 540 8945
Alternative Phone:	701 540 5213
Fax:	
Email:	Briana175@midco.net

Representation Information: (if applicable)	
Name (printed):	
Address:	
Primary Phone:	
Alternative Phone:	
Fax:	
Email:	Briana175@midco.net

Location of property requesting a variance:	
Address:	1005 27th St. N
Zoning District:	SR-3
Legal Description:	Lot 14 Block 15 College 2nd Addition

Proposed Variance Information:

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

Setback - 0403 Sub B6C

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

We have a foot tall fence want to ^{add} 2 feet to extend it to 8 feet.

Please explain your project, describing why you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions. (Attach additional pages, if needed.)

Adding 2 feet to fence for privacy/harassment by Neighbor. Constantly looking into home taking pictures of Dottie. Stands upon his truck to see over existing fence to see if Dottie's car is in driveway. Put window tint on windows so can not tell if he's watching Dottie at back door. Dottie has to have maise and shotgun when she is in her own yard not knowing where he is. We have included pictures from our security cameras that we had to put up. We can not move fence in 3ft from property line due to our sidewalk and back door steps.

Criteria for Approval:

Please explain how your requested variance meets the following five criteria for approval, pursuant to Section 20-0914 of the Land Development Code: (Attach additional pages, if needed.)

- 1) The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;

Dottie is not allowed to use back door of house unless absolutely necessary. Putting extra 2 feet on fence will stop neighbor from looking in house and also seeing back door. In our situation this is unique to our property. Police have been called and there is nothing that can be done.

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

The fence is on our property and does not interfere on neighbor. The only effect it would have on neighbor is not being able to see or watch Dottie.

- 3) The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

See *
photo
of
sidewalk
steps

To install a 2 foot section on to our 6 foot fence will allow us freedom to ~~move~~ around our back yard without being watched. Moving fence in 3-foot per code will require complete sidewalk half of cement steps removed. We could not use the door to get out of house due to ~~door~~ fence being close to door. This variance will keep from removal of sidewalk and half of steps.

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

The variance will help Dottie feel safe and not violated in her own home and yard. She will be able to let dog out without worry of pictures being taken of her.

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

The 2 foot addition would keep neighbor from looking in house and having view of our back door.

to Add 2 foot section with
out Variance

moving fence in

3 feet from property

line per code, will

require removal of

sidewalk and part of

steps. This has to

be done if variance

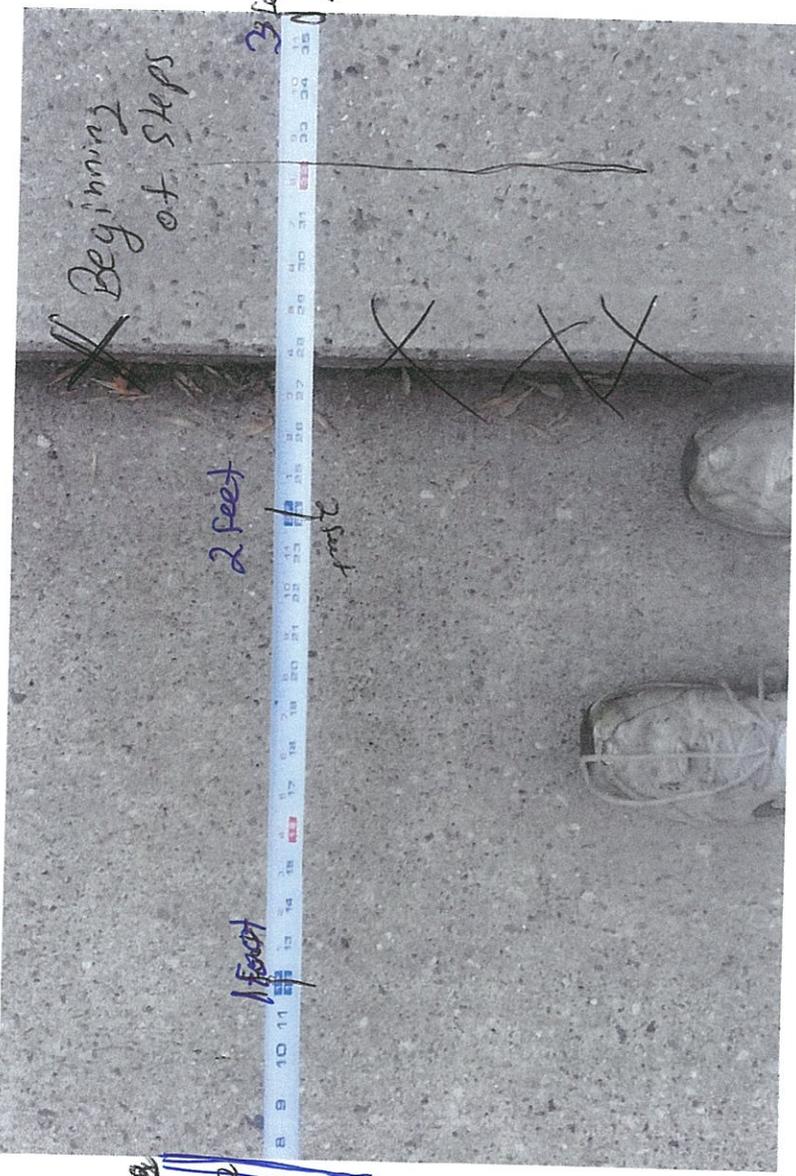
is not granted.

Removal of part

of steps requires

cutting step for

half.



Property
Fence
line

3 feet

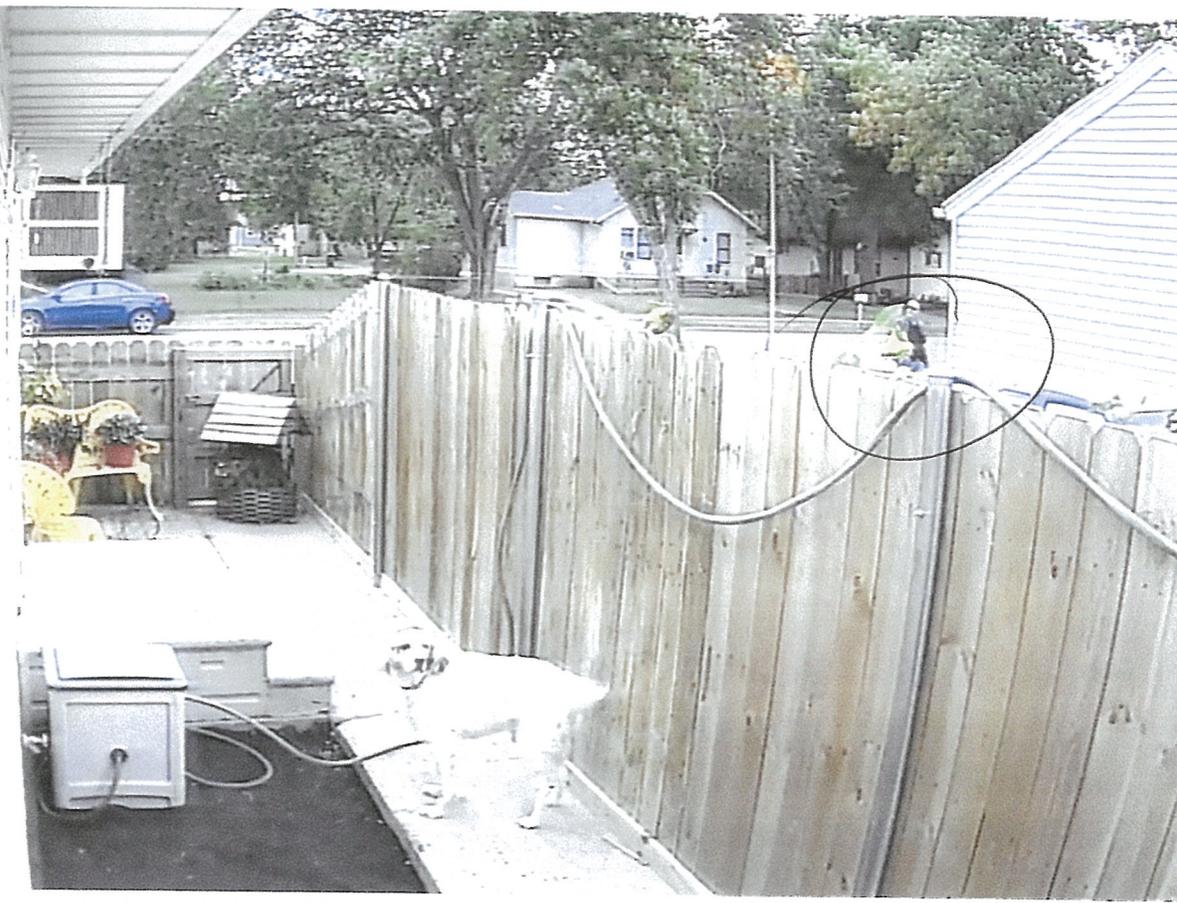
Back door

Beginning of steps

2 feet

1 foot

SDR-B3300_192.168.1.200:4520-Cam02
09-02-2016 20:09:45



ion looking in window



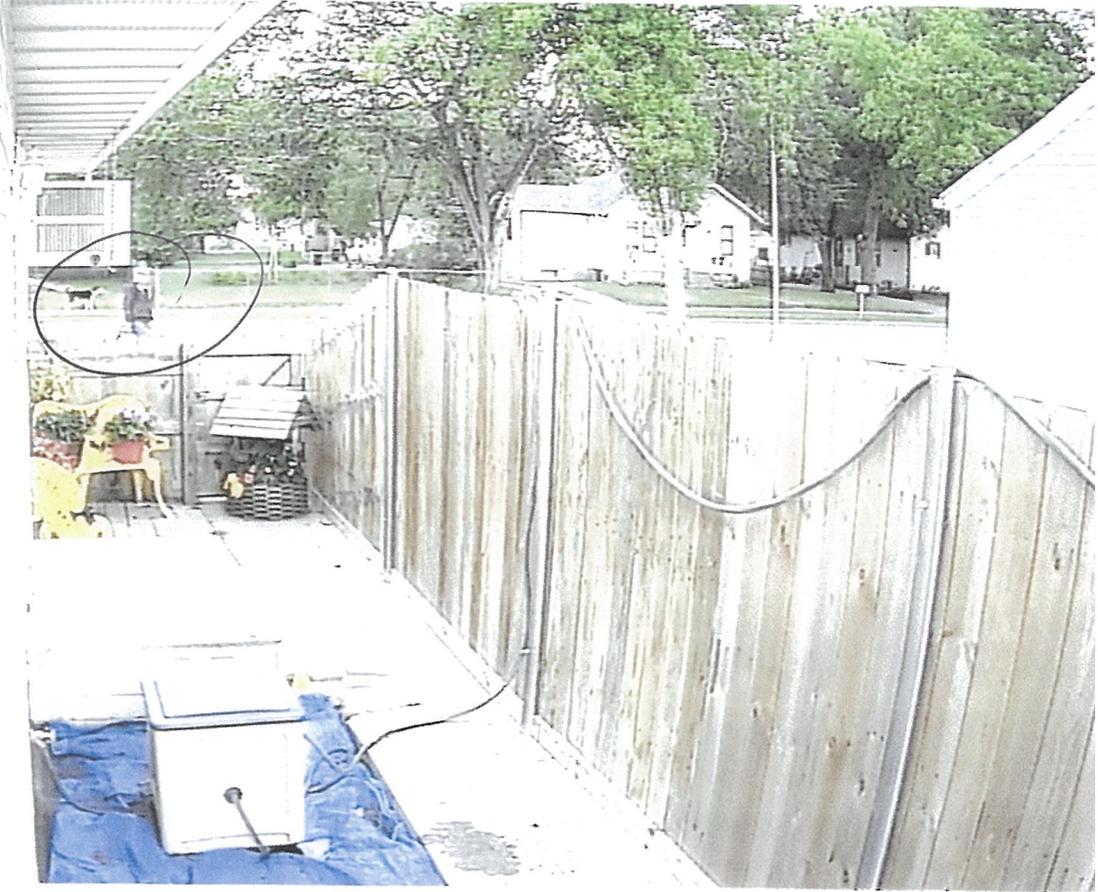
Added Lattice work
to 2 Panel in attempt
to keep Neighbor from Looking
In Yard.

SDR-B3300_192.168.1.104:4520-Cam01
09-14-2016 07:00:50



don looking into bedroom window

SDR-B3300_192.168.1.104:4520-Cam02
09-19-2016 07:19:36



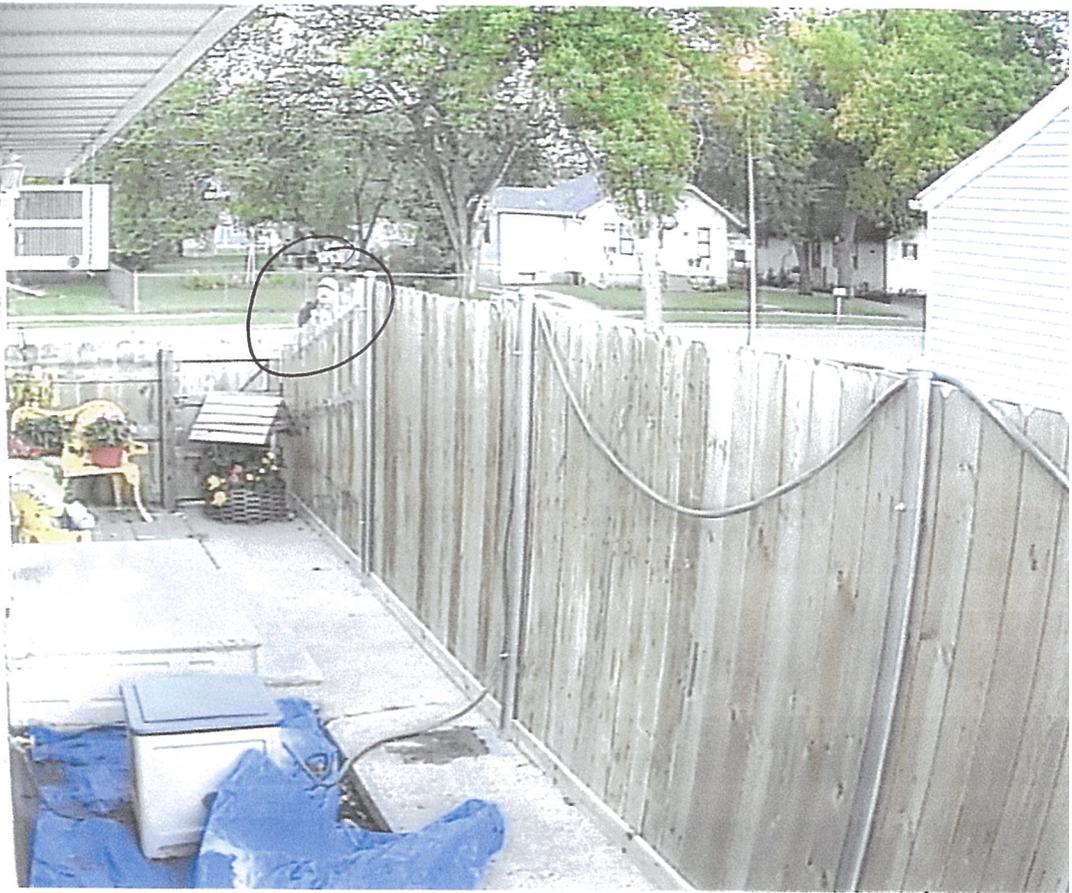
.his is new don looking in front windows

SDR-B3300_192.168.1.104:4520-Cam02
09-20-2016 08:34:45



don looking in north window

SDR-B3300_192.168.0.22:4520-Cam02
09-26-2016 07:14:32



don looking into windows again

DR-B3300_192.168.0.22:4520-Cam01
9-26-2016 07:17:13



lon looking into windows again bedroom

SDR-B3300_192.168.1.200:4520-Cam02
09-01-2016 14:20:43



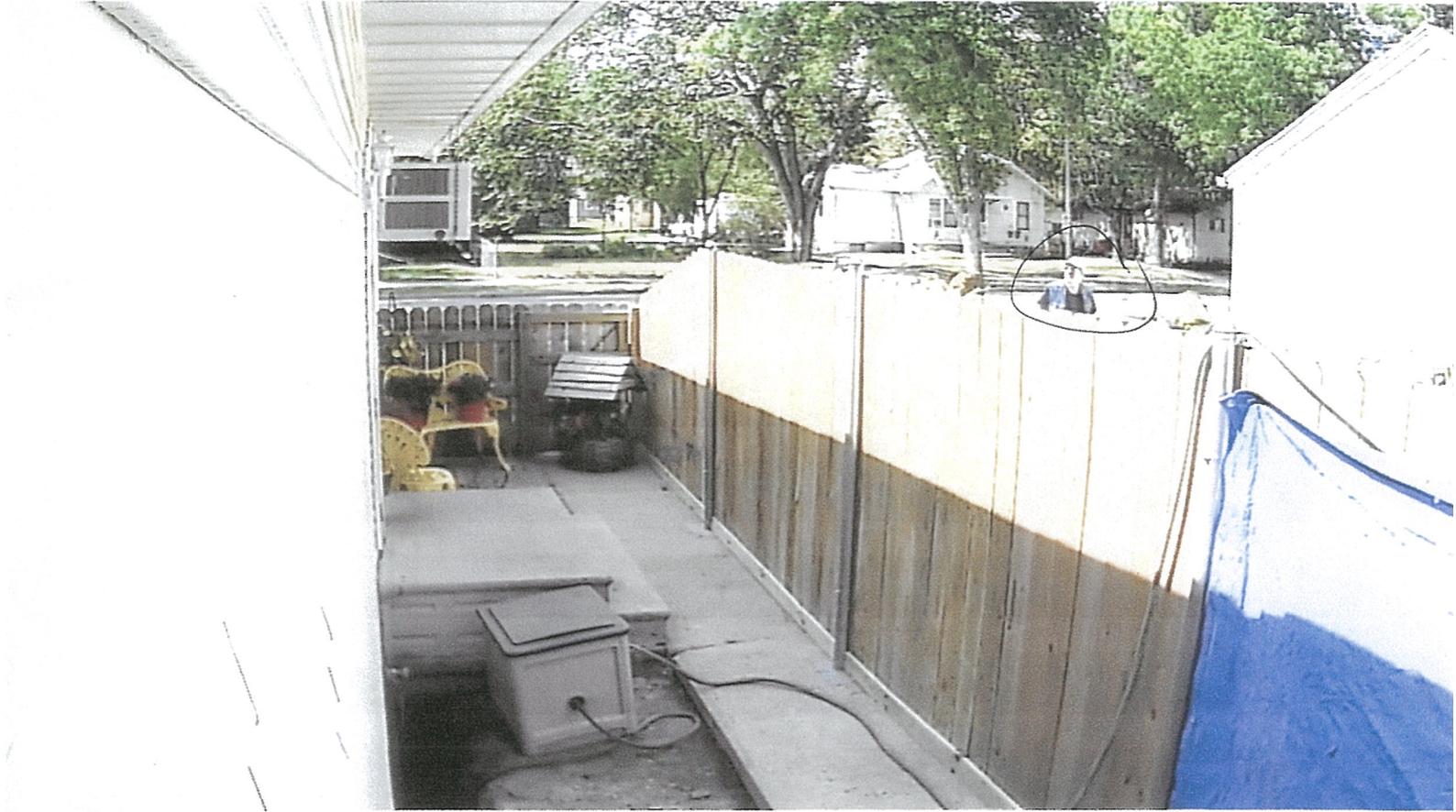
don melvin looking into windows

5DR-B3300_192.168.1.104:4520-Cam01
09-19-2016 07:02:36



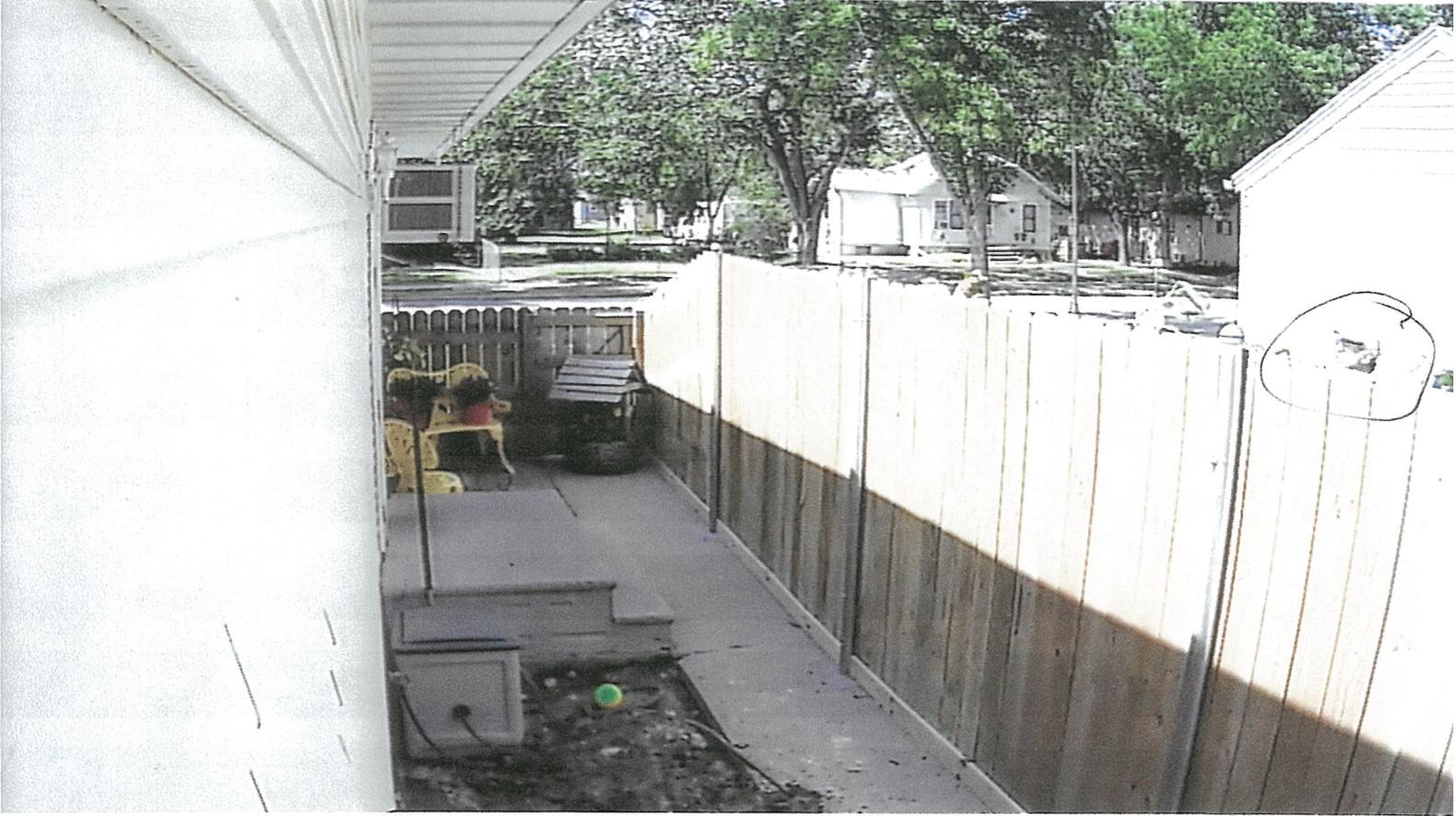
don looking in bedroom window

5DR-B3300_192.168.1.200:4520-Cam02
09-01-2016 14:20:42



don melvin looking into our windows

SDR-B3300_192.168.1.200:4520-Cam02
08-24-2016 13:40:45



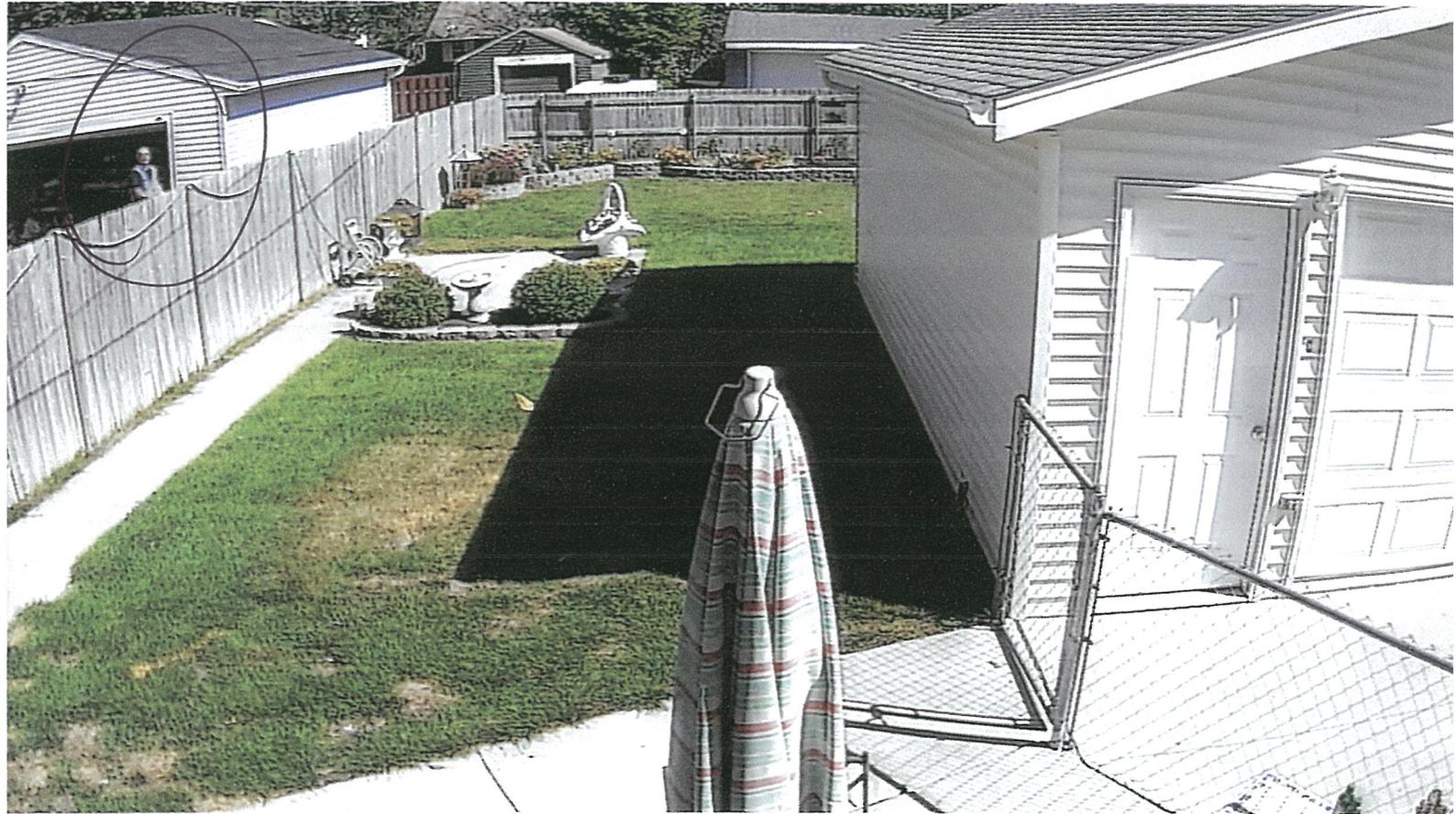
Don Melvin looking in windows

SDR-B3300_192.168.1.200:4520-Cam02
09-02-2016 20:08:58



don looking in the windows

SDR-B3300_192.168.1.104:4520-Cam03
09-14-2016 14:13:27



don looking at bedroom window

Video to this picture is
on USB stick.

SDR-B3300_192.168.1.104:4520-Cam01
09-13-2016 09:34:45



don looking into bedroom window then looking to see if Dottie left the driveway

October 15, 2016

**City of Fargo
Planning Department**

Re: Variance Request for 1005 27th St North, Fargo, ND

In keeping with the information in your letter of October 7th I would like to review the whole project file pertaining to this matter. I would like a hard copy.

Respectfully, 

**Don Melvin
1009 27th ST N
Fargo, ND 58102
(701) 809-5692**

October 15, 2016

**Att: Aaron Nelson, Planner
Fargo Board of Adjustment**

Re: Variance Request for 1005 27th St North, Fargo, ND

I respectfully request the Board not to approve the requested variance. This fence was constructed in non-compliance with the zoning code cited in the Board's October 7th letter. In addition, the fence is on my property.

As you can see by the attached copy, I've had my lot surveyed. The fence enters my property. I brought this to my neighbors' attention in the spring of 2014, and gave them a copy of the survey. This encroachment reduces the size of my lot and affects its value. This will surely trouble a potential buyer and any lending agency.

I purchased a lot that is 50 feet by 140 feet. I believe my neighbors' lot is the same. They want to retain their land. I want to retain my land.

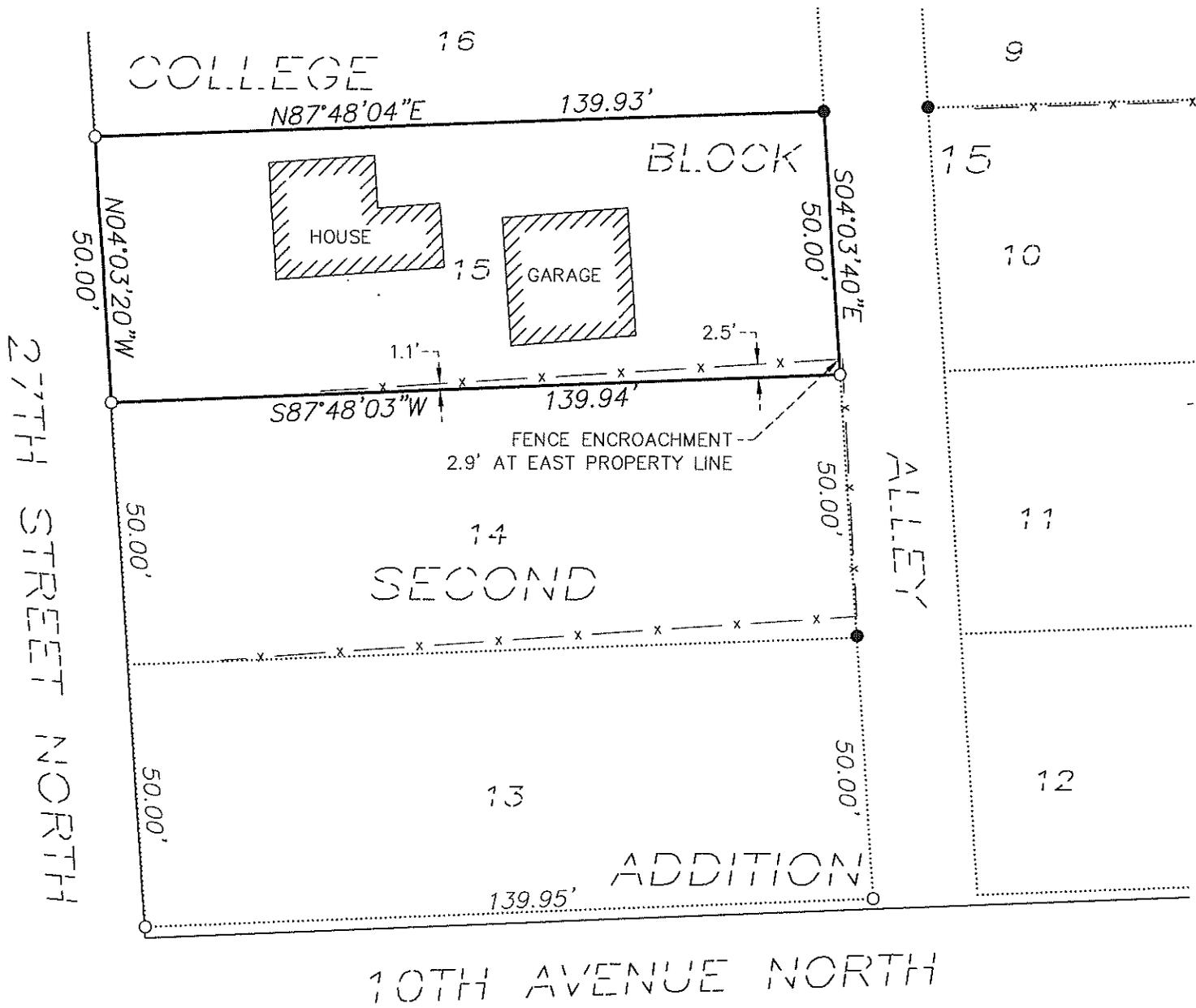
I ask that the Board direct that the fence be moved off my property, at least one foot back onto the 1005 27th St North property, at which point I would have no objection to it being built higher.

Respectfully, 

**Don Melvin
1009 27th ST N
Fargo, ND 58102
(701) 809-5692**

CERTIFICATE OF SURVEY

LOT 15, BLOCK 15, COLLEGE SECOND ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



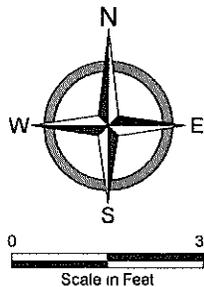
CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Steven W. Holm

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-25-2014



LEGEND

- IRON MONUMENT FOUND
- SET 5/8"x18" REBAR WITH YELLOW PLASTIC CAP #6571
- x — EXISTING FENCE LINE

State of North Dakota,
County of Cass

On this 25th day of March, 2014, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

BRENDA JO KOSKI
 Notary Public
 State of North Dakota
 My Commission Expires May 9, 2018

Brenda Jo Koski
 Notary Public, Cass County, North Dakota
 My Commission Expires: May 9, 2018

	BOUNDARY SURVEY FOR: Don Melvin 1009 27th Street N Fargo, ND 58102	DATE 03/25/14	LAST DAY ON SITE 03/24/14	CH'D BY CDH	PROJECT NO. 17819
		REVISED	SCALE 1" = 30'	DRAWN BY SWH	SHEET 1 OF 1