

**BOARD OF ADJUSTMENT  
MINUTES**

**Regular Meeting:**

**Tuesday:**

**January 27, 2015**

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, January 27, 2015.

The Members present or absent were as follows:

Present: Ken Lepper, Dominic Fischer, Russell Ford-Dunker, Michael Love, Deb Wendel-Daub

Absent: Mark Lundberg

Chair Lepper called the meeting to order.

**Item 1: Approval of Minutes: Regular Meeting of November 25, 2014**

Member Love moved the minutes of the November 25, 2014 Board of Adjustment meeting be approved. Second by Member Fischer. All Members present voted aye and the motion was declared carried.

**Item 2: Old Business**

**a) Update on DMU building materials discussion**

Planner Aaron Nelson briefly reviewed the Board's discussion from the November 2014 meeting. He noted staff is working on creating a task force as directed by the Board, to explore and help develop a text amendment to the Land Development Code regarding building material standards for use in the DMU, Downtown Mixed Use zoning district. Mr. Nelson stated in the interim staff will follow the direction taken at the last meeting using the written interpretation included in the packet, and will direct applicants whose projects are denied to appeal to the Board.

**Item 3: New Business**

**a) Variance Request – 821 5th Avenue South: Request for a variance of Section 20-050 of the Land Development Code. The requested variance is to allow a building addition to encroach into the required front setback area within the SR-3, Single-Dwelling Residential zoning district: APPROVED**

Planner Aaron Nelson presented the staff report for the proposed variance request. He noted staff did receive one inquiry from an area property owner. Mr. Nelson stated all approval criteria have been met and staff is recommending approval.

Applicant representative Margaret Follingstad, YHR Partners, spoke on behalf of the variance request.

Member Love declared a conflict of interest and asked to be excused from voting.

Member Wendel-Daub moved the findings of staff be accepted and the variance to allow a building addition to encroach into the required front setback in the SR-3, Single-Dwelling Residential zoning district be approved, on the basis that the review criteria of Section 20-0914.E.1 have all been met. Second by Member Fischer. Upon call of the roll Members Fischer, Wendel-Daub, Ford-Dunker, and Lepper voted aye and the motion was declared carried.

**b) Appeal of an Administrative Decision: Appellant claims that staff erred in determining that property was adjacent to “collector” roadway and therefore not permitted to have an Electronic Messaging Center sign larger than 48 square-feet, as outlined in Section 20-1307 of the Land Development Code: DENIED**

Planner Aaron Nelson presented an overview on the background regarding staff's decision to deny the applicant's request to place an Electronic Messaging Center (EMC) sign onto an existing on-site pylon sign pole, as the sign exceeded the maximum size limitations allowed in the Fargo Sign Code. He explained the relevant facts supporting staff's decision and shared a copy of the Zoning District Chart, which showed the size requirements. Mr. Nelson stated the applicant feels staff erred in their decision and is bringing the appeal before the Board of Adjustment for a ruling.

Further discussion evolved regarding staff's interpretation of the sign code as it relates to EMC signs; the direction the proposed sign will face; sign size limitation on collector roadways; and adequacy of the current sign code language in relation to how it addresses the City's frontage roads and other road classifications.

Applicant and property owner Derek Christopherson spoke on behalf of his application. He stated the request is to replace existing signage facing east and west which is not visible from Main Avenue, with a one-sided EMC sign facing Main Avenue. Mr. Christopherson also noted the EMC sign would eliminate placing separate signs on the existing sign pole for each of the four businesses that are currently located in the building on the property.

Building Inspections Administrator Ron Strand spoke on behalf of staff's decision and the criteria used to make the decision to deny the request.

Planning Administrator Jim Gilmour suggested that if the applicant feels they should be able to put the proposed sign where requested and the code says they cannot, it may be a better course of action for the applicant to request an amendment to the ordinance.

Member Wendel-Daub stated she felt the appeal could be acted on today, and added she agreed with Mr. Gilmour's suggestion of an amendment to the ordinance. Member Fischer concurred.

Member Love moved to affirm staff's decision to restrict the EMC sign face area to a maximum of 48 square feet. Second by Member Wendel-Daub. Upon call of the roll Members Ford-Dunkirk, Love, and Lepper voted aye. Members Fischer and Wendel-Daub voted nay. The motion was declared carried.

Member Wendel-Daub moved to overturn the staff's decision to restrict the EMC sign face area to a maximum of 48 square feet (City Attorney Jason Loos stated she needed to provide a reason); and the reason behind that is the frontage road does not have a name and it is considered a frontage road to a collector; and 36th Street has a name however it is considered a frontage road to the Interstate; and the visibility, geometry, orientation, and the density of the properties in that area warrant a larger sign. Second by Member Fischer.

Before the roll call Member Lepper clarified that a yes vote overturns the decision that was put before the Board, and a no vote affirms the decision that was put before the Board.

Upon call of the roll Members Fischer and Wendel-Daub voted yes. Members Love, Lepper and Ford-Dunker voted no. The motion failed for lack of a majority.

Member Love moved to direct staff to investigate this further and present possible text amendments either on the basis of how that frontage road is classified as is it technically a collector or is it not; or should there be a text amendment in the sign code that says if your adjacent to a collector that fronts an arterial then the sign interpretation is possibly different. Second by Member Ford-Dunker. Upon call of the roll Members Love, Fischer, Ford-Dunker, Wendel-Daub, and Lepper voted aye. The motion was unanimously approved.

Member Lepper clarified that the appeal was denied and staff's decision stands as approved.

**c) Discussion on formation of the Land Development Task Force.**

Planning Director Jim Gilmour explained this request by City Commission is to create a task force to review the current Land Development Code, and the variance process used when staff reviews applications for development in the downtown core neighborhoods. He stated staff is seeking two volunteers from each of the following Boards: Board of Adjustment, Historic Preservation Commission, and the Planning Commission. Mr. Gilmour noted the Chair of each Board will notify staff once they have confirmed the names of their volunteers.

**d) Discussion on Board of Adjustment meeting time and location during new City Hall construction.**

Mr. Gilmour brought this item to the Board in preparation for the upcoming construction of the 2nd Street floodwall and the new city hall. He explained that the existing city hall parking lot is expected to be out of commission starting at the end of March 2015 for the next two years. Mr. Gilmour noted this will affect parking for Board Members and the public when attending commission hearings. He shared some options staff has proposed to help accommodate the loss of this parking lot, and he asked the Board to review for discussion at the next meeting.

**Item 4: Other Business**

No other business was discussed.

**Item 5: Adjournment**

Member Fischer moved to adjourn the meeting at 9:57 a.m. Second by Member Ford-Dunker. All Members present voted aye and the motion was declared carried.