CITY OF Fargo

PLANNING AND DEVELOPMENT
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MEMORANDUM

TO: Board of Adjustment
FROM: Aaron Nelson, Planner AN
DATE: September 20, 2016
RE: Board of Adjustment Meeting

The next meeting of the Board of Adjustment will be held on Tuesday, September 27, 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, September 27, 2016 9:00 a.m.
City Commission Room
AGENDA

1. Approve Minutes of August 23, 2016 Meeting

2. New Business
   a) Variance Request – 3101 Peterson Parkway North
   Request for a variance of Section 20-0501 of the 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.

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.

EQUAL HOUSING OPPORTUNITY

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BOARD OF ADJUSTMENT
MINUTES

Regular Meeting: Tuesday: August 23, 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, August 23, 2016.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Russell Ford-Dunker, Michael Love, Mark Lundberg, Mike Mitchell

Absent: Matthew Boreen

Chair Wendel-Daub called the meeting to order.

Item1: Approve Order of Agenda
Member Ford-Dunker moved the Order of Agenda be approved as presented. Second by Member Love. All Members present voted aye and the motion was declared carried.

Item 2: Approval of Minutes: Regular Meeting of July 26, 2016
Member Love moved the minutes of the July 26, 2016 Board of Adjustment meeting be approved. Second by Member Lundberg. All Members present voted aye and the motion was declared carried.

Item 3: New Business
a) Variance Request – 810 11th Street North: Request for a variance of Section 20-0501 of the Land Development Code. The requested variance is to allow construction of an accessory building that would encroach into the required rear and interior-side setback areas within the SR-5, Single-Dwelling Residential zoning district: APPROVED
Assistant Planner Barrett Voigt presented the staff report and reviewed the criteria used during staff's analysis of the request. Mr. Voigt stated all approval criteria have been met and staff is recommending approval.

Applicant Steven Hannig spoke on behalf of the application.

Board discussion ensued regarding concerns with the property owner to the north and their potential, future plans for a garage, as well as spacing requirements between the house and the garage on the property.

Chris Rose, Plan Reviewer II with the Inspections Department, addressed further questions by the Board.

Member Ford-Dunker moved the findings of staff be accepted and the variance to allow a detached garage to be placed 0 feet from the interior-side and 3 feet from the rear property lines in the side yard area within the SR-5 zoning district be approved, on the basis that the review criteria of Section 20-0914.E.1 have been met. Second by Member Lundberg. Upon call of the roll Members Mitchell, Love, Lundberg, Ford-Dunker, and Wendel-Daub voted aye. Absent and not voting: Member Boreen. The motion was declared carried.

Item 4: Other Business
No other business was discussed.

Item 5: Adjournment:
Member Love moved to adjourn the meeting at 9:21 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:** September 20, 2016
Address: 3101 Peterson Parkway North	
Legal: Lot 5, Block 4, Edgewood Farms Addition	
Owner(s)/Applicant: Jeremy Magelky	
Reason For Request: To construct a shed within the required setback area.	
Zoning: SR-2, Single Dwelling Residential	

SR-2 Dimensional Standards		Proposed Accessory Structure Standards	
Setbacks:		**Setbacks:**	
Front:	30’	**Front:**	>30’
Interior-Side:	8.5’ (10% of lot width)	**Interior-Side:**	**2’**
Rear:	25’	**Rear:**	>25’

Background:
The applicant, Jeremy Magelky, would like to construct an 8’ x 18’ detached shed within the required interior-side setback area. The property is located at 3101 Peterson Parkway North and is within the SR-2, Single-Dwelling Residential, zoning district. Section 20-0501 of the Land Development Code (LDC) requires structures to be set back at least 10% of the lot width or 10 feet (whichever is less) from the interior-side lot line within the SR-2 zoning district. The subject property is 85 feet wide, and would therefore require an interior yard setback of 8.5 feet. The applicant, however, would like to construct the proposed shed 2 feet from the interior-side property line, within the interior-side yard. Accordingly, the applicant is requesting a variance in order to allow the proposed garage to encroach 6.5 feet into the required interior-side setback area.

According to the applicant, his intent is to construct the new shed in the same location as a previously existing 9’ x 19’ shed that was their when he purchased the property. The City’s parcel records indicate that the house on the subject property was constructed in 1981. Building Inspections staff was not able to find any record of a building permit being issued for the original shed. In addition, the precursor to the SR-2 zoning district—the R-1A zoning district, which would have been in effect during the time of the original house construction until the establishment of the SR-2 zoning district—would have had a minimum interior-side setback requirement of 12% of the lot width, which equates to 10.2 feet. Because there is no building permit on file for the original shed and the previous zoning district would have required a larger setback than the current SR-2 zoning district, it is likely that the original shed was illegally nonconforming with the City’s zoning 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 <u>all</u> 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;

As noted by the applicant, the subject property slopes downward towards the river in the rear of the property on the east side. Staff has found that a portion of the subject property’s rear yard area is within the current FEMA Special Flood Hazard Area (100-year floodplain). The floodplain extends up to 55 feet

west as measured from the rear property line, as illustrated in the attached map. Aside from a portion of the property being within the floodplain, no other unique conditions have been identified.

It should be noted that despite a portion of the rear yard being located within the floodplain, staff finds that there is adequate buildable area located in the rear yard. The floodplain is located at least 65 feet from the rear of the house. There appears to be about a 5% grade (1:20 slope) within the buildable area between the house and the floodplain, which should not preclude the construction of a shed.

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-2 zoning district. Staff suggests that the request for the variance arises from the applicant's desire to place the shed in a specific location on the lot, 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 not received any comments on this application other than a letter of support for the variance request from the neighboring property owners to the north. This letter was submitted by the applicant along with the other application materials. A copy of this letter is attached. Staff suggests that these owners of the property to the north of the subject property would likely be the most aggrieved by the requested variance. As noted in the letter, . Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. **(Criteria satisfied)**

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

According to the applicant, the variance is being requested in order to construct a shed, which is a typical accessory structure permitted with single-family homes. Specifically, the applicant states that the variance is needed to allow construction of the shed within the northern interior-side setback area, because the slope of the rear yard would restrict construction of a shed to only one alternative location on the property which would require the removal of several existing trees.

However, staff finds that the slope of the backyard would not completely limit areas where a shed could be constructed, and that the removal of trees does not create an unnecessary physical hardship. As referenced above, there appears to be about a 5% grade within the buildable area between the house and the floodplain in the rear yard area where a shed could be constructed. In addition, the applicant has presented little evidence to suggest that the shed cannot be constructed on the property without coming into conflict with applicable site development standards.

Ultimately, 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 a shed (as an accessory use) 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 suggests that there is no hardship because a shed could be constructed 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 applicant to construct the garage in the location proposed by the applicant. **(Criteria satisfied)**

Staff Recommendation: "To accept the findings of staff and deny the requested variance to allow a shed to be constructed within the required interior-side setback in the SR-2 zoning district on the basis that the review criteria of Section 20-0914.E.1 (a & c) have not been met."

CITY OF Fargo

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

3101 Peterson Parkway North

0 100 200 Feet

N

CITY OF Fargo

Building Envelope

100 Yr Flood Plain

2014 Contour Elevations

3101 Peterson Parkway North

0 25 50 Feet

N

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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*): _____ Date: 8/26/16

Note: *A nonrefundable filing fee of $185.00 must be accompanied with the application at time of submittal.*

Office Use Only

Date Filed: 8-30-16 Planning Contact: _____ Nonrefundable Fee $185.00: Cash

Jeremy Magelky
3101 Peterson Pky N.
Fargo, ND 58102

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):	Jeremy Magelky
Address:	3101 Peterson Pkwy N
Primary Phone:	701-371-9399
Alternative Phone:	—
Fax:	—
Email:	

Representation Information: *(if applicable)*	
Name (printed):	
Address:	
Primary Phone:	
Alternative Phone:	
Fax:	
Email:	

Location of property requesting a variance:	
Address:	3101 Peterson Pkwy N Fargo ND
Zoning District:	SR2
Legal Description:	Lot 5 Block 4 Edgewood Farms Addition

Proposed Variance Information:

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

The 8.5ft setback requirement along the side of my house

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

The standard is 8.5ft and my project would propose a 2' setback.

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

I am looking to replace my existing 9'x19' shed along the North side of my house with a new 8'x18' shed. Due to the slope of my backyard, the only place that would meet the standard would involve cutting down (2) 25 foot tall pine trees. I have attached a letter from the adjacent homeowner who wants the new shed in the same location as it is currently. Due to shrubs and trees, the existing location screens it the best for both property owners.

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;

Due to the slope along the back of the property, the only location to meet the standard would be more visible to the neighbors and cut down established trees.

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

Please see the attached letter that shows the adjacent property owner prefers this variance.

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;

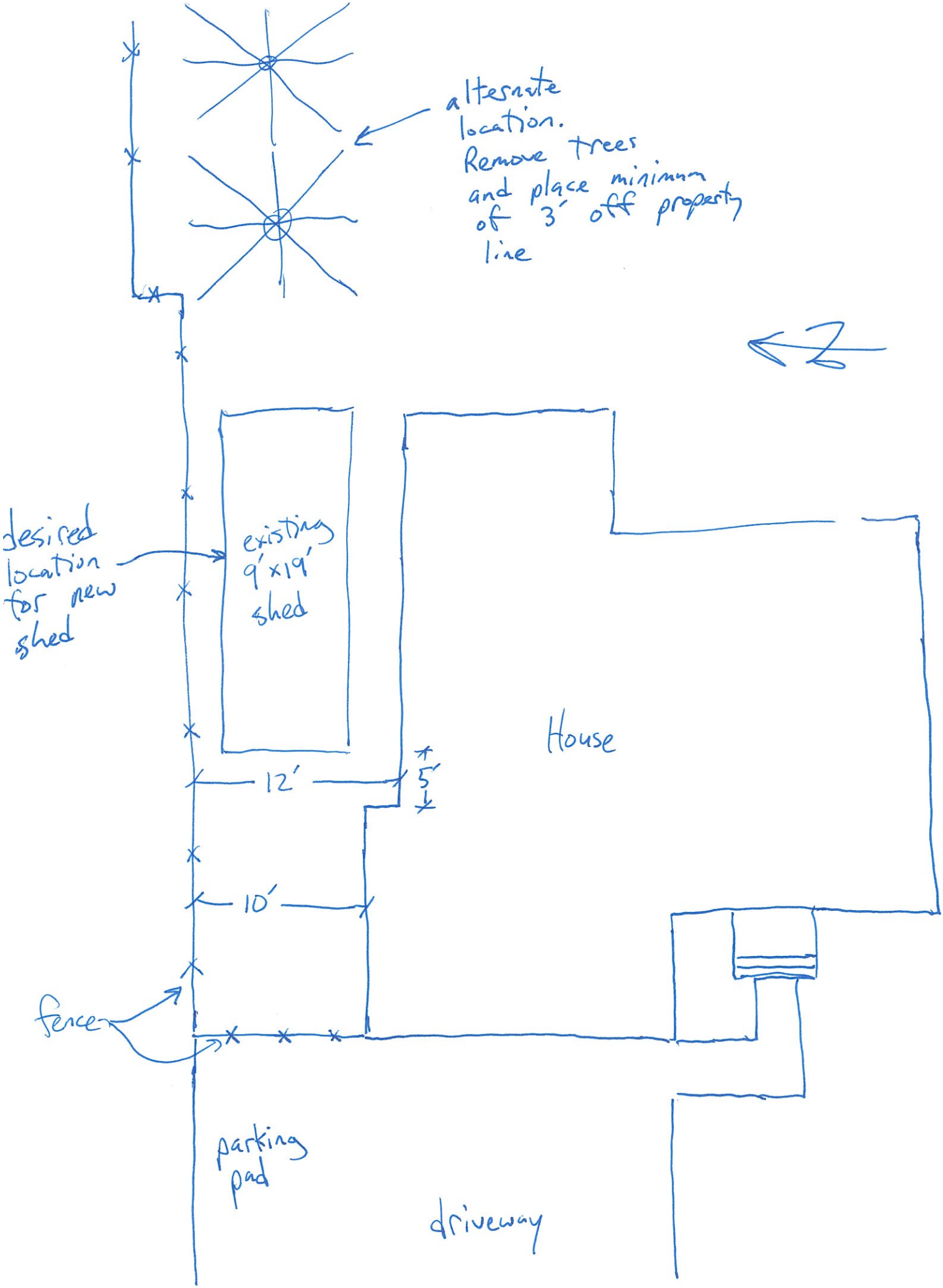
The main concern is to avoid cutting down existing trees to place the new shed

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

This variance will not adversely affect any of the above mentioned concerns.

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

The shed will not be placed any closer to the property line than the existing shed.


alternate location. Remove trees and place minimum of 3' off property line
desired location for new shed
existing 9'x19' shed
House
12'
5'
10'
fence
parking pad
driveway

August 29, 2016

To whom it may concern,

It is our understanding Jeremy and Kara Magelky, living at 3101 Peterson Parkway N, are interested in replacing their older shed with a new shed. We have learned while it is acceptable to keep their current shed in its current location, city code no longer allows them to place a new shed in the same location.

As we share a property line, we support the Magelky's and the City of Fargo in allowing them an exception to the rule so the new shed can be placed where the current shed resides.

I have two reasons for my request:

1. Where the shed currently sits is on the south side of our house where there are no windows. It is barely visible from my back yard, and poses no issues.
2. The new location would require the loss of trees in the Magelky's yard and a noticeable difference in the view from our back yard. Instead of enjoying the view of the pine trees, we would now see a shed. We would prefer to keep the natural aesthetics of the landscape.

Thank you for considering an exemption in this case.

Please do not hesitate to contact us if you need any additional information,

Marla and Ian McIntyre

3107 Peterson Parkway N
Fargo, ND 58102
701-446-7907