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Sharon Schacher, Deputy Auditor
Larry M. Weil, Planning Director
Wanda J. Wilcox, City Assessor
Dorinda Anderson, Business Development Director
Jim Brownlee, CPA, City Auditor

West Fargo Planning and Zoning Commission
April 10, 2006 at 7:00 P.M.
West Fargo City Hall

Members Present: Frank Lenzmeier
Ross Holzmer
Kim Keller
Wayne Nelson
Jason Gustofson
Terry Potter
Harriet Smedshammer

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Brock Storrusten, Wade Kline, Cheryl Lipp, Dennis Rheault, Michael Miller, Don Spieker, Kevin Lutt

The meeting was called to order by Chair Lenzmeier.

Commissioner Nelson made a motion to approve the March 13, 2006 minutes. Commissioner Keller seconded the motion. No opposition. Motion carried.

Wade Klein, FM Metro COG, reviewed the Metropolitan Transit Plan and described the West Fargo route. He stated that they are updating the 5-year transit plan. He discussed Vision 2020 – what do we want to see at the end of the next decade, strategic initiatives and growth strategies. An online survey regarding transit is available for people who use public transportation and who do not. There are public meetings in Fargo and Moorhead tomorrow.

Discussion was held regarding the West Fargo transit contract, ridership, number of miles covered...

Chair Lenzmeier opened public hearing A06-15 Conditional Use Permit for group child care facility for up to 18 children at 4426 Sunset Boulevard (Lot 23, Block 9 of Westport Beach 1st Addition), City of West Fargo, North Dakota.

Steven Zimmer reviewed the following information from the staff report:

The applicant is applying for a conditional use permit for a child care facility under the Zoning Ordinance and a group day care license from Cass County Social Services. Applicant is applying for up to 15 children. The property is located in West Port Beach, south of 40th Avenue West, west of Cass County Highway #17 (Sheyenne Street), the home is not yet complete. Currently the applicant operates a group child care facility at a different location.

The applicant has submitted a site plan for the property, showing a single family dwelling on an interior lot. The property has a triple-stall garage and two-stall driveway which accesses Sunset Boulevard. The backyard is not fenced. The applicant proposes to fence the site this spring.

Off-street parking for dropping off children can be accommodated on a two-car driveway which provides access to a three-stall garage attached to the house. It is important children be dropped off in the driveway, as this continues to be a concern of

the Planning and Zoning Commission. One off-street parking space should be provided for each 10 children being cared for in the facility while maintaining two off-street parking spaces for personal vehicles. All off-street parking spaces can be accommodated on site.

Notices were sent to property owners within 350' and we have received comments from two property owners who were concerned 18 children is too many for a residential area.

Staff recommends approval with the following conditions:

1. Dropping off and picking up children will only be allowed on the driveway.
2. A 6-foot solid fence must be installed before child care begins.

There were no public comments. The hearing was closed.

Commissioner Smedshammer asked when the applicant was moving. Ms. Lipp indicated the end of May. She stated that they won't have a fence right away, but probably will not be outside other than walking to the park until the yard is ready.

Commissioner Smedshammer asked how many children she currently has now. Ms. Lipp stated that she has 14 listed, but 6 are only during the summer and on days off from school.

Commissioner Gustofson asked her where she currently has her daycare. Ms. Lipp stated that she did live on 10 ½ Avenue West, but recently moved into a townhouse. She has only little ones currently --- only 5 until summer.

Discussion was held regarding the fence. Ms. Lipp stated that they are hoping to get the fence stalled as soon as possible.

Steven indicated that in the past the commission has approved daycares for up to 8 children until the fencing is installed.

Commissioner Gustofson made a motion to approve the request subject to the two conditions listed in the staff report, as well as an additional condition that the number of children be limited to eight until the fence is installed. Commissioner Potter seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-16 Rezoning from R-1A: Single Family Dwelling District to P: Public Facilities, part of Lot 1 & all of Lot 2, Block 1 of High School 3rd Addition and from R-1: One & Two Family Dwellings to P: Public Facilities, Lot 32, Block 1 of Homestead 1st Addition, City of West Fargo, North Dakota.

Steven reviewed the following information from the staff report:

The property is located south of 7th Avenue East and east of 9th Street East. The proposed and existing uses are consistent with the City's Future Land Use Plan. The property was replatted last May, to allow for a High School Football facility.

A portion of the school property where the high school is located is zoned Public Facilities District. The parcel containing Veterans Memorial Arena and the western portion of the athletic complex is zoned R-1A and the easternmost parcel is zoned R-1. A condition of subdivision approval last May was to rezone these parcels which would provide for uniform zoning between school and park properties.

Notices were sent out to adjacent property owners for review. A few calls were received asking for additional information.

Staff recommends approval.

There were no comments from the public. The hearing was closed.

Commissioner Potter made a motion for approval. Commissioner Keller seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-17 Zoning Ordinance Amendment to Section 4-427.2.14 Providing for Automobile Repair Shops and Major Mechanical Work as Permitted Uses within the C: Light Commercial District.

Larry reviewed the following information from the staff report:

The applicant operates a van conversion and sales business as a conditional use within the C: Light Commercial District. Recently he has decided to sell the business, but the interested party is a transmission repair business which is considered major mechanical under the Zoning Ordinance. Major mechanical work is only allowed in the CM: Heavy Commercial/Light Industrial District. The applicant indicated that times have changed and so has the manner in which businesses do transmission and engine repairs. Parts are readily available today, so it is not necessary to store vehicles and major vehicle parts for days or weeks until the repairs can be finished.

We were contacted by another business recently that is located in a Light Commercial District and has been conducting major mechanical work for many years. The business is considered 'grandfathered' so the current ordinance does not affect them. They indicated support for the ordinance change noting that businesses often change out engines without doing all the overhaul work on site.

The applicant requested that Section 4-427.2 Permitted Uses, subsection 14 be amended. The provision currently reads as follows:

“Automobile service stations, where motor vehicle fuels and minor automotive accessories are sold at retail and minor services for automobiles are performed, but not to include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other nuisance characteristics.”

The applicant proposed that the reference to major mechanical be deleted with the rest of the provision remaining the same.

The Planning staff has reviewed the Light Commercial and Heavy Commercial/Light Industrial District provisions and has visited with other staff and businesses. We are in agreement with the change, but do have some concerns that the ordinance needs to be clear so we do not have problems with vehicles that are not in operating condition and automobile parts being stored outside the building. The Light Commercial district is not intended to allow outdoor storage even if the area is fenced. Areas of the City zoned Light Commercial include some areas along Main Avenue, Sheyenne Street, and 13th Avenue. We propose that the ordinance provision be reworded to read as follows:

Automobile service stations and automobile repair shops, where motor vehicle fuels and minor automotive accessories are sold at retail and/or services for automobiles are performed, but not to include body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, outdoor storage of vehicle parts, or other work involving noise, glare, fumes, smoke, or other nuisance characteristics.

With the revised wording, the proposed amendment seems to be appropriate. Another hearing would be required at the City Commission.

Applicant Don Spieker stated that he's owned Superior Conversion Vans for over 19 years and is selling the business. The buyer, Autotrans (transmission business) will do all the work inside. Every thing will be kept neat and clean, there won't be any junk outside or outside storage. They've never had a complaint in the 19 years he's been in business.

There were no other comments from the public. The hearing was closed.

Commissioner Gustofson asked how many other areas would this affect. Larry stated any light commercial areas – 13th Avenue, Sheyenne Street. Staff would be concerned with any outside storage. Everything would need to be kept inside.

Chair Lenzmeier asked for clarification – the only change is to allow major work inside. Larry stated yes, if commissioners are comfortable with the wording.

Commissioner Nelson made a motion for approval. Commissioner Smedshammer seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-18 Variance to Subdivision Ordinance to Allow Simple Lot Split for Lot 15, Block 1 of Charleswood 16th Addition, City of West Fargo, North Dakota.

Steven reviewed the following information from the staff report:

Both Lots 14 and 15 have single family structures, which are both occupied. The applicant is requesting to utilize the simple lot split procedure for subdividing property rather than a minor subdivision replat. A variance to the subdivision standards for a simple lot split is required because Lot 15 is larger than $\frac{1}{2}$ an acre and the lot split would create more than two parcels.

The applicant submitted a sketch of the manner in which the lots would be subdivided. The applicant proposes to split property from Lot 15 and add the footage to Lot 14, and also split property from Lot 14 and add the footage to Lot 15. The applicant wishes to obtain approval through the simple lot split process as it is less costly than a minor subdivision replat.

The Simple Lot Split procedure was developed to simplify the transfer of property for smaller lots. There are seven conditions that must be met before the Simple Lot Split procedure can be utilized. The intent is to minimize cumbersome metes and bounds legal descriptions as these types of parcels are difficult for public officials to work with. The procedure is utilized primarily for single family lots where the split is not part of a continuing scheme of lot splitting for a particular area.

The objective of a simple lot split is to take property from one lot and transfer it to another. The parcel being split off would be attached to an adjacent lot by deed so not to have a separate meets and bounds parcel standing alone. The proposed simple lot split between Lots 14 and 15 would create four parcels, which in the past has not been allowed. In circumstances such as these a minor subdivision replat has been recommended. The Planning and Zoning Commission is to review variance requests with the following conditions in mind:

1. The conditions upon which the variance is based are unique to the property and are not applicable generally to other properties in the same district.
2. Because of the particular physical surrounding of the property, a particular hardship to the owner would result, as opposed to mere inconvenience, if the strict letter of these regulations were carried out.
3. The granting of the variance would not harm the surrounding neighborhood in any way and would be beneficial to public health, safety, and welfare.
4. The variance is consistent with the proper development of the area.

The applicant submitted a letter addressing the criteria for justifying a variance. The applicant noted that the lot is an unusually large lot within the area, and the lot's location and shape preclude it from being further subdivided for another single family dwelling or other public use. Though the lot is large, the lot size is not unique within the overall Charleswood development or within the R-1A: Single Family Dwelling District city wide.

The applicant believes the literal interpretation of the provisions of the ordinance is unfair in this case because Lot 15 is already over $\frac{3}{4}$ acre in size. The applicant's intent is to straighten out an unusual property line which splits a utility easement. Lot 14 would still be less than $\frac{1}{2}$ acre after the split. Though the applicant views the ordinance as being unfair, it appears as though the literal interpretation of the provisions of the ordinance does not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Ordinance. Following the minor subdivision replat procedures is an inconvenience to the applicant. Granting the variance would create four cumbersome metes and bounds parcels which is not the purpose of the simple lot split procedure and certainly not the intent of the subdivision ordinance. The variance would not be consistent with the proper development of the area, as the legal descriptions would be cumbersome.

The applicant indicated he could not foresee that special conditions and circumstances are the result from actions of the applicant. This is the case because the property was platted in this manner by the developer. The applicant cannot foresee that granting the variance will confer on the applicant a special privilege that is denied to others; however, there are several properties of similar size within the R-1A: Single Family Dwelling District.

Notices and maps were sent out to area property owners. We received calls requesting additional information, but no concerns were mentioned.

Staff recommends denying the variance request for the following reasons:

1. The request is not justified under the criteria for granting a variance.
2. The request does not meet two of the conditions which provide for simple lot splits.
3. The simple lot split would create four cumbersome legal descriptions which is contrary to the purpose of the subdivision ordinance.

There were no comments from the public. The hearing was closed.

Commissioner Holzmer asked if there is another procedure they should go through. Larry stated that they could follow the minor subdivision procedure. Similar to what a builder did in Homestead Court Addition a few years ago when they couldn't meet the simple lot split criteria.

Commissioner Nelson asked what costs would be involved. Assistant City Engineer Brock Storrusten stated that a plat can run a couple thousand dollars and a simple lot split about \$700. Commissioner Nelson indicated that a title opinion is a lot easier to read when trying to sell a property than metes and bounds descriptions.

Discussion was held regarding the utility easement.

Commissioner Nelson made a motion to deny the request based on staff recommendations. Commissioner Keller seconded the motion. No opposition. Motion carried.

The next item on the agenda was A06-19 Minor PUD Modification for Elmwood Court 2nd Addition.

Larry reviewed the following information from the staff report:

The applicant proposes to reduce the number of units developed from 16 units to 14 units and increase the number of buildings from two to three. The reason for doing this is there is a greater demand for end units and the change would result in two additional end units.

The original PUD was approved by the City Commission in November 2003 and consisted of 58 rental units in eight structures. In May 2004 a Minor PUD Modification was approved for site, building elevation, and floor plan changes with the intent to develop upscale buildings for condominiums. In October 2004 a Minor PUD Modification was approved for development signage.

According to the plans submitted, the number of units for the two properties will be decreased from 16 units to 14 units, and the amount of lot coverage will also be decreased. The density and intensity is being decreased, so the Planning and Zoning Commission may consider the changes as minor in nature.

The two properties could be tied together as one zone lot if buildings were constructed across property lines. This would require one property address with unit numbers. From an emergency response perspective this would be confusing, because the unit numbers (letters) would be in sequence and jump from building to building. It would be most appropriate to replat the two lots into three lots, because of the potential 911 confusion. The developer will need to amend the condominium documents to show the development changes. A copy of the documents would need to be provided to the City.

Staff recommends approval with the following conditions:

1. A subdivision replat is required to show a lot for each structure.
2. The developer provides a copy of the amended condominium documents.

Chair Lenzmeier asked if the applicant was present. There was no response.

Commissioner Gustofson asked if the applicant could get a building permit without the replat. Larry stated that if the replat was in process, permits could be issued.

Commissioner Gustofson made a motion for approval based on staff recommendations. Commissioner Potter seconded the motion. No opposition. Motion carried.

The next item on the agenda was A06-20 Request for Access onto Sheyenne Street for Lot 2, Block 1 of Lepird's 2nd Addition (1050 Sheyenne Street), West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property, which is located west of Sheyenne Street, is zoned for single family dwellings and platted for single family homes. The applicant proposes to construct a single family structure, which is consistent with City Plans and Ordinances. The street is classified as a Minor Arterial which is a limited access street requiring review by the Planning and Zoning Commission and City Commission.

The property has been a legal lot of record for many years. The applicant has applied for a building permit to construct a single family dwelling on the property and would like to access the lot from Sheyenne Street. The lot was established in a manner that access was always intended to be onto Sheyenne Street. The applicant also owns an adjacent lot which has access to a private drive that connects to Sheyenne Street. The adjacent lot is developed with a single family residence, and the property is being sold. Both lots have been lots of record for many years.

In March 2005 the applicant requested a simple lot split for the adjacent lot to add additional area to this lot. The lot split provided for lots of comparable area, though both lots exceeded the minimal area requirements for the R-1A: Single Family Dwelling District.

Access to Sheyenne Street was thought to be possible via a private access easement which is on the adjacent lot to the north. After researching this further it was determined that the access easement was an exclusive easement for the property owner to the north. Permission for use of the access easement was not granted.

The applicant has submitted a site plan for the property showing the proposed driveway about 22' south of the north property line. The neighbor's driveway to the north is on the south property line. Traffic conflicts may be minimized by moving the proposed driveway to the north, so there would be one larger driveway for the two lots. The structure would either need to be moved back or north somewhat, or the garage reoriented. The applicant has provided for a turn-around on the property so that they would not need to back into the street which is good. This should be provided even if there is a change in the orientation of the structure.

Staff recommends approval with the following conditions:

1. The driveway access is located at the north lot line.
2. A turn-around for vehicles is provided on the property, so vehicles can drive onto Sheyenne Street.

Applicant Michael Miller gave a brief history of the property. When he bought the property it was sold under the assumption that access ran down the middle of the two lots. He discussed access with the neighbors to the north and south and they had no problem with the proposal. He'd applied for a building permit and the day the excavator arrived, a neighbor to the north of the adjacent neighbor told them that they should think twice about digging. Meanwhile, the adjacent neighbor changed his mind about sharing access.

The Millers held off building until this year and are proposing access further to the south instead of connecting with the one to the north as it is gravel and has been built up over the year. Mr. Miller distributed an alternate plan, which he distributed to commissioners. They propose pushing the house back 5' and creating more of a turn around.

Larry stated that the City Engineer is concerned with the proximity of the structure to Sheyenne Street and there being

adequate room for cars to turn around. He encourages them to move the structure back 10' back. Mr. Miller indicated that wouldn't be a problem.

Commissioner Gustofson asked for clarification – so the house would be setback 40' instead of 30'.

Commissioner Nelson made a motion to approve the request, subject to condition #2 listed in the staff report. Condition #1 would be replaced with requiring a setback of 40' from the front property line to allow for adequate vehicle turn around. Commissioner Holzmer seconded the motion. No opposition. Motion carried.

The next item on the agenda was Continued - A05-72 Simple Lot Split Lot 15, Block 5 of Elmwood Court Addition, City of West Fargo, North Dakota.

Steven indicated that there is no news. They're getting closer to an agreement.

Commissioner Potter made a motion to continue this item until the next meeting. Commissioner Nelson seconded the motion. No opposition. Motion carried.

The next item on the agenda was discussion on Child Care Facilities.

Larry stated that a couple of City Commissioners have asked that the importance of this being reviewed as a Conditional Use and having them review group child care facility requests be looked at by the Planning and Zoning Commission. This request wasn't made by the Commission as a whole, but by a couple City Commissioners.

The City of Fargo allows daycare for fewer than 12 as a permitted use. Another option would be to change daycares to provisional uses and have review by staff and or the Planning and Zoning Commission.

Larry talked about when daycare providers relocate. The conditional use permit rests with the property, not the applicant. In Fargo, the application expires if the provider moves and they would need to reapply.

Commissioner Gustofson asked about the number of complaints received per year. Larry indicated not many. A few over the past few years.

Commissioner Holzmer indicated neighbors don't want to complain. He stated concern with 15-18 children being cared within a home as being more of a business.

Commissioner Nelson indicated that the commission spends an inordinate amount of time reviewing day care requests. He would prefer Fargo's method or provisional.

Larry stated that Fargo caps the number of children at 12 and requires a conditional use permit for 12 -18 children.

Larry indicated he would have some language drawn up for review at the next meeting.

Under non-agenda – Kevin Lutt expressed concerns with the Mr. Miller's access onto Sheyenne Street being approved. He didn't realize he could speak during that portion of the meeting.

Mr. Lutt stated that when the excavator arrived, Mr. Murphy (neighbor to the north) had to drive on his lawn because a bulldozer and three pickups were blocking his driveway. Mr. Lutt stated that a year ago he was told no curb cuts onto Sheyenne Street would be granted because there was access to the south. Mr. Miller could've given himself an access easement. He stated that there is much disappointment among the neighbors about access being granted.

Mr. Lutt stated concern with the proposed setback of the house and the possibility of the sidewalk along Sheyenne Street getting broken up and visibility concerns regarding pedestrians and bicycles. Sheyenne is a very busy street. He asked that the access request be reconsidered.

Commissioner Gustofson indicated that the request involves two different parcels, not one. Larry stated that if access had been denied, it would've been considered a taking. Mr. Murphy has a similar situation and relatives, who might inherit his property, could sell off both lots and a structure could be constructed on the vacant lot.

Mr. Lutt stated that he realizes it a legal lot, but nobody wants this.

Chair Lenzmeier stated that when the permit was approved, he expressed concerns with the additional curb cut – preferred a shared access between Mr. Murphy and Miller. Mr. Murphy refused to meet to discuss this issue.

Commissioner Nelson stated that Mr. Lutt has an opportunity to express his concerns at the City Commission Meeting next week.

Commissioner Smedshammer made a motion to adjourn. Meeting adjourned.