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Larry M. Weil, Planning Director
Steven Zimmer, Senior Planner
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission
November 8, 2010 at 7:00 P.M.
West Fargo City Hall

Members Present: Frank Lenzmeier
Terry Potter
Kim Keller
Jerry Beck
Edward Sheeley
Jason Gustofson

Members Absent: Tom McDougall

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Dustin Scott, Michael Domitrovich, Terry Cookman, Gary Hornbacher

The meeting was called to order by Chair Lenzmeier.

Commissioner Potter made a motion to approve the October 11, 2010 meeting minutes as printed. Commissioner Beck seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A10-37 Prairie Heights Development First Addition, a subdivision located in the NW $\frac{1}{4}$ of Section 29, T139N, R49W, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property is located east of the Sheyenne River on the south side of 32nd Avenue East and west of Veterans Boulevard, between 2nd and 4th Streets East. The area was annexed into the City in 2005. In September a conditional use permit was approved allowing for a religious institution on the property, provided the parcel was platted within 12 months.

The applicant is currently constructing a church on the property. The entire 31-acre parcel will be platted into one lot for the present time with the intent of replatting the property in the future for sale and/or development for other nonreligious uses.

The Land Use Plan of the Comprehensive Plan depicts the property as Medium Density Residential which can accommodate structures up to eight units. The City may consider 12-unit structures where creative and exemplary design considerations are given. The density is up to 16 units per acre of lot area. The zoning for the property is Agricultural which provides for churches as a conditional use. Recently a Conditional Use Permit was approved for the facility being constructed.

The preliminary plat consists of one lot. The plat includes right-of-way dedications for 32nd Avenue East and 2nd Street East, and also includes the right-of-way which the City acquired for 4th Street East. Second Street East is an existing township gravel road which provides access to area properties between 32nd Avenue and the Reserve at Osgood First Addition where public street right-of-way has been platted and paved street constructed to 40th Avenue East. The City purchased the right-of-way for 4th Street East and currently a sewer, water and street project is under construction. The street right-of-ways shown on the plat include 75' for the south half of 32nd Avenue East and 35' for the east half of 2nd Street East which meets the City right-of-way standards. The submitted plat estimates the location of the right-of-way. Updated information has been forwarded to the applicant and changes will be made to the plat.

The applicant previously requested access to 32nd Avenue with the Conditional Use Permit request which was approved with conditions. An agreement has been developed spelling out the conditions and restrictions of access approval. The location of the access should be shown on the plat along with the notation "Access Possibly Restricted in Future to Right-in/Right-out or

¾ Access” so that the applicant and any potential future owners are made aware of the restriction. This is similar to what was approved for Oakridge 1st Addition to the east.

A drainage plan is required for the subdivision which will be reviewed and approved by the City Engineer.

Park dedication is required for the development. The required amount of park dedication for residential development is 10% of the gross area which would amount to approximately 3.1 acres of land or the equivalent value in cash-in-lieu of land dedication. When the regional/community park land was purchased in Eagle Run, there was an agreement between the Park District and City that a portion of the land dedication required for future subdivisions would be in the form of cash-in-lieu to help cover annual bond payments. A greater percentage of the dedication amount would be cash-in-lieu on the west side of the Sheyenne River than on the east side (7% vs. 5%), because the regional/community park would be more accessible to the residents living on the west side. With the remaining 3-5% land dedication, neighborhood parks would be provided for the developments. The Park District would provide recommendations on how the subdivision area fits which their park plans and whether they would be looking for land dedication or cash-in-lieu of land dedication. We are waiting for a final review and response by the Park District.

Sewer and water services are in the process of being extended to the property. A special improvement district has been established to provide for the needed services. All subdivisions developed south of I-94 which benefit from the major sewer extension services installed through City financing are required to pay a utility hookup fee. Arrangements for payment need to be made prior to the subdivision plat being recorded.

Notice and copy of the Preliminary Plat was sent to City Departments and Utility Companies for review and comments.

It is recommended to conditionally approve the Subdivision Plat based on the application’s consistency with City plans and ordinances. The conditions of approval are as follows:

1. Departmental comments are taken into consideration.
2. An Attorney Title Opinion is received.
3. A certificate of taxes showing taxes being current is received.
4. A Drainage Plan is received and approved by the City Engineer.
5. A Final Plat with any necessary easements is received.
6. The required utility hook-up fee is adequately addressed.
7. A park dedication agreement is received.
8. A subdivision improvement agreement is received.
9. Access location and restriction to 32nd Avenue East is shown on the Final Plat and the access agreement is received.

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

Chair Lenzmeier asked for clarification regarding cash-in-lieu and the bond. Larry stated that Rendezvous Park was developed as a larger, regional park and due to the costs involved. The Park District relies on cash-in-lieu payments from other developments in the area to help pay the annual bond payments.

Discussion was held regarding the improvement district in terms of tying into the major trunk line for sewer extension services, as well as infrastructure.

Chair Lenzmeier asked if the applicant was aware the 32nd Avenue access may be changed. Larry stated that the location is probably not going to change. Staff would like the location spelled out on the plat. Once traffic increases, safety measures would most likely be right-in/right-out access to the property.

Commissioner Keller made a motion to approve the request subject to the 9 conditions listed in the staff report. Commissioner McDougall seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A10-38 Variance to the Rear Yard and Height Requirements for a detached accessory building at 217 47th Avenue East (Lot 2, Block 1 of McMahon Estates 4th Addition), City of West Fargo, North Dakota.

Steven indicated that the applicant has requested that the height variance be removed and that the Commission only consider the rear yard variance. He also stated that we are not reviewing the conditional use permit, as that was approved by the Planning & Zoning and City Commissions last month. This is a completely different application. To further minimize the

effect on the property to the west, the applicant proposes moving the building further north and is requesting a variance to decrease the rear yard setback to 10'.

Steven then reviewed the following information from the staff report:

At the October meeting, an application was approved for a conditional use permit for a 2,100 ft² detached accessory building for recreational purposes. The applicant is now proposing to construct the accessory building 10' from the rear property line, which does not meet the City's zoning ordinance requirements.

The applicant proposes to construct an accessory building with a decreased rear yard setback because he believes it will reduce the visual affect on the neighboring property to the west.

Variances are only to be granted when the following can be demonstrated:

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

It does not appear the variance can be justified as none of the criteria listed above are met. There are no special conditions and circumstances that exist with the property or buildings that are not applicable to other lands or buildings in the same zoning district. The property owner is not being deprived of rights being enjoyed by others because of the ordinance provisions. If the variance would be granted, the applicant would benefit from a special privilege that would not be provided to other lands, structures, or buildings in the same district.

The applicant could construct a structure within the setback requirements. It appears that the building can be accommodated on this property without the granting of a variance.

Notices were sent to adjacent property owners within 150' and we have received comments from the adjoining neighbor who is opposed to the variance request, as well as to the building size. We have also received comments from other residents in the McMahan Estates and outside the notification area who were concerned about the size and height of the building and were informed that the size of the building is in violation to the development's restrictive covenants. The staff informed the concerned citizens that the City cannot enforce restrictive covenants, as this is a private matter. Property owner(s) in the development would need to take legal action privately to enforce the covenants.

It is recommended to deny of the variance on the basis that the application does not meet the criteria for granting a variance.

Applicant Gary Hornbacher referred to the aerial photo/site plan and asked about the intent or purpose of the setback. Larry stated that the R-1E District was established in the early 1990s with input from City Departments for subdivisions that were more rural in character with larger structures. Because these areas were further from fire and water services, an additional buffer from buildings was required. In town the rear and side yard setbacks are 3'. At the time it was felt rural areas should have greater setbacks.

Mr. Hornbacher stated that the adjoining property is over 100' away. They have a nice big yard and bought the property so they can use the yard. In town the setback is 3'; however, the rural setback is 10 times more. He wondered about exceptions mentioned at the last meeting. The reason he's back is because he didn't know about the 30' setback, otherwise he'd have made his request all in one shot.

Steven stated that the comments made regarding exceptions, were in regards to only about 3 variances approved by the Planning & Zoning Commission in the past.

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

Discussion was held regarding variance criteria. Commissioner Keller stated that in terms of uniqueness to the area, there aren't too many properties that have huge power line easements in the backyard. She also stated that the applicant was trying

to help by moving the proposed structure further away from the affected/adjacent neighbor to the west.

Larry stated several properties in this subdivision located along the utility corridor. It has to be so unique that only this property is affected.

Chair Lenzmeier asked for clarification regarding covenants, that they can't be taken into consideration. Steven gave examples of restrictive covenants in other developments – Eagle Run doesn't allow outbuildings that aren't the same color as the main structure, Sommerset has an active homeowners association to review/enforce their restrictive covenants. We don't have covenants on file as they go above and beyond City ordinances. It's the responsibility of the developer to indicate this is what City Ordinances say and this is what the restrictive covenants include. The City has minimum standards.

Commissioner Keller stated that some Developers have put in Restrictive Covenants and then let property owners put in something that violates the covenants.

Mr. Hornbacher stated that setbacks aren't listed in their covenants as a restriction.

Terry Cookman, 4614 2nd Street East, stated that after the meeting last month, he and his wife looked at things – the 2,100 square foot steel building, 20' in height. They moved out to the country for their kids – open space, not fenced in... The covenants say maximum 600 square foot building that should match the house. There is no place for this in his development. He's had time to think and is against a bigger, steel building.

Commissioner Sheeley stated that he understood the request; however, it doesn't meet the variance criteria. Commissioner Potter indicated that he didn't feel comfortable starting a precedent.

Commissioner Keller asked if the rear yard setback could be changed. Larry stated that it could through the zoning ordinance amendment process. Steven indicated that he had mentioned to the applicant's wife that a more successful way would be to change the zoning ordinance, especially with the greater setback than in town residential. Mr. Hornbacher stated that it just seemed like such a huge task at the time.

Discussion was held regarding locations of other R-1E neighborhoods.

Commissioner Sheeley made a motion to deny the request based on it not meeting the variance criteria. Commissioner Beck seconded the motion. No opposition. Motion carried.

Under Non-agenda, Chair Lenzmeier asked Larry to update the Commission on the Redevelopment Study for Sheyenne Street.

Larry stated that the City Commission put in the Budget for a study of the downtown area. FM Metro COG developed the Scope of work. Seven firms submitted proposals. The Committee had to look at the qualifications and not costs of the study. The committee was made up of business representatives, City Staff, Engineering... Frank represented the Planning & Zoning Commission. Discussion was held regarding the scope of the study and cost involved.

Commissioner McDougall made a motion to adjourn. Meeting adjourned.