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

West Fargo Planning and Zoning Commission
November 13, 2006 at 7:00 P.M.
West Fargo City Hall

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

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Tom McDougall

The meeting was called to order by Chair Lenzmeier.

Commissioner Smedshammer made a motion to approve the October 23, 2006 minutes as printed. Commissioner Nelson seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-61 McDougall's 1st Subdivision, Rezoning from A: Agricultural to R-1E: Rural Estate District and Land Use Plan Amendment from Agricultural Preservation to Rural Residential for property located at 1724 40th Avenue West, West Fargo, ND (Auditor's Lot 2 of SE ¼ of Section 25, T139N, R50W – Mapleton Township).

Steven reviewed the following information from the staff report:

The property is located outside the City Limits, but is located within West Fargo's ET area. The property was platted using metes and bounds descriptions and has been a lot of record in Cass County since 1990. Two years ago the property owner moved the existing home off the property, with the intent of constructing a new home in the future. When the applicant applied for a conditional use permit, there was a misunderstanding regarding setback requirements and right-of-way needs. The applicant would like a 125' setback from the centerline of the road and it needs to be 150'. The applicant is now proposing to rezone the property to R-1E: Rural Estate District, to decrease the setback and dedicating 75' of right-of-way along the south side of the property for 40th Avenue West.

The proposed development is not consistent with the City's Land Use Plan which depicts the area as Agricultural Preservation. The property is located outside of the Sheyenne Diversion and is within a flood hazard area in Mapleton Township. To develop the property for the proposed use a Land Use Plan amendment would be required to take the land out of Agricultural Preservation and place it in a Rural Residential designation. The property could then be platted and rezoned for large-lot single family residential.

The City's Comprehensive Plan shows the area near the applicant's property designated as Agricultural Preservation. The purpose of this designation is to preserve the agricultural land in the area which is outside the City limits and not protected from flooding. Specific zoning provisions were recently adopted which increased the minimum lot requirements to promote the preservation of agricultural lands identified on the Land Use Plan. Pre-existing parcels are "grand fathered" in.

Site plans were submitted showing the existing barn and proposed single family structure. The structure would be placed 50' from the front property line, 265' from the west property line and 416' from the east property line. The subdivision is bordered 40th Avenue West which is a section line road. The principal street is 40th Avenue West which is classified as an Arterial

Street. The amount of dedicated right-of-way for 40th Avenue West should be 75'. The preliminary plat shows 75' of right-of-way provided along 40th Avenue West.

This property contains a cell phone tower site which previously has been reviewed and approved by the City Commission, which makes this a permitted use according to city ordinance.

Generally properties within the 100-Year Flood Plain are allowed to make improvements to the property if the structures are adequately raised and protected; however, if properties are in a designated flood way they are not allowed to make improvements. The proposed building will need to be reviewed more closely by the City's Building Administrator during the permitting process. Certain procedures as set forth by FEMA and the State need to be followed by the City when reviewing building permits.

Notices were sent to adjacent property owners, county and township officials, and City departments for review and comment. We received comments from Moore Engineering that the single family structure should be built meeting the floodplain standards because the Flood Insurance Rate Map (FIRM) has not been changed yet. Building a structure using best available data and proposed changes would not be sufficient for mortgage companies and insurance needs. The community could also be in violation to the National Flood Insurance Program requirements if the changes are not made to the FIRM.

Park dedication is not required, as the property is considered developed for a single residential structure. Should the property be subdivided in the future to accommodate additional residential lots, park dedication would be required at that time. The Corridor Overlay District requires a landscape plan be submitted for along 40th Avenue West with subdivision platting.

Staff recommends approval subject to the following:

1. The Land Use Plan is amended from Agricultural Preservation to Rural Residential for the subdivision area.
2. An Attorney Title Opinion is received.
3. A drainage plan is received and approved by the City Engineer.
4. A landscape plan is received.
5. The residential structure is developed such that it meets the National Flood Insurance Program standards.
6. Any necessary easements are placed on the Final Plat.

Applicant Tom McDougall indicated he reviewed the staff report and doesn't have a problem with the conditions. There is a tree located to the south to buffer the property. They're working on the drainage plan. A preliminary title opinion has been submitted and he doesn't believe the information will change.

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

Chair Lenzmeier opened public hearing A06-62 Variance to Front Yard Setback Requirement & Conditional Use Permit for Addition to Single Family Dwelling at 3834 Willow Road (Lot 9, Block 1 of Corrected Plat of Willow Creek Subdivision, Cass County, North Dakota), West Fargo, ND.

Steven reviewed the following information from the staff report:

The property is located west of West Fargo and south of Interstate 94 along the west side of 38th Street West in the Willow Creek Subdivision. The use (single family) has been in existence for some time and is considered a conditional use within the Agricultural District. The area has been developed as a rural residential subdivision that was developed prior to the city expanding its extraterritorial jurisdiction thus the use was grandfathered in. The property is shown on the Township or County FIRM (Flood Insurance Rate Map) and potentially within a Special Flood Hazard Area Inundated by 100-Year Floods.

After the hearing was scheduled for the conditional use permit, it was determined the proposed request did not meet front yard setback requirements. The applicant submitted a request for a variance to decrease the front yard setback from 40 to 35'.

A site plan was submitted showing the existing property with a proposed 688 square foot addition onto the front of the house. The property meets the minimum lot size of one acre under the Agricultural Zoning District for existing properties. The setback from the proposed house addition is 37'. The front yard setback requirement for this zoning district is 40'.

Variations 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. The conditions and circumstances do result from the actions of the applicant. 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 needs to meet proper setbacks, relocate the proposed addition onto the west side of the property, or have the subdivision rezoned to R-1E: Rural Estate District which allows a front yard setback of 30'. A conditional use permit would still be required to add onto the single family structure in an agriculturally zoned district.

It appears part of the property is located within the designated 100-Year Flood Plain. Generally properties within the 100-Year Flood Plain are allowed to make improvements to the property if the structures are adequately raised and protected, or if the improvements are less than 50% of the value of the structure; however, if properties are in a designated flood way they are not allowed to make improvements. The location of the proposed addition will need to be reviewed more closely by the City's Building Administrator during the permitting process to determine if the structure is out of the flood plain, or if flood proofing measures are required. Certain procedures as set forth by FEMA and the State need to be followed by the City when reviewing building permits.

Notices were sent to adjacent property owners and Mapleton Township for review and comment.

Steven stated that staff recommends the following:

1. Denial of the variance on the basis that the proposed structure does not meet the criteria to justify the variance.
2. Approve the Conditional Use Permit subject to the following:
 - a. The applicant is to meet all Federal, State and local floodplain protection requirements for improvements to the site and structures if necessary.
 - b. The structure must meet all City building codes.
 - c. The structure must meet all Zoning Setback requirements.

Commissioner Smedshammer asked what type of addition was being proposed. Steven stated that an enclosed sunroom. The applicant with the way the house was set up, it will only work on the front of the house.

Commissioner Gustofson asked if the variance is approved, will he go ahead with the rezoning? Steven stated that he could add onto the side or back of the house with a conditional use permit.

Commissioner Holzmer asked about the setback. Steven stated that the requirement is 40'. The applicant is requesting 35', but thinks it's probably 37'. Steven had indicated he should get the lot surveyed.

Commissioner Gustofson asked for clarification on rezoning. Would they just need to get a building permit if the subdivision was rezoned? Larry stated yes. The subdivision is fully developed. Rural residential is an appropriate use for the area. When the subdivision came into the extraterritorial area, there wasn't an R-1E: Rural Estate District. Rezoning has been suggested to area residents in the past.

Steven stated that the applicant thought applying for a variance would be quicker than rezoning.

Discussion was held regarding rezoning.

Commissioner Gustofson made a motion to deny the variance and to approve the conditional use permit, subject to conditions a-c. Commissioner Keller seconded the motion. No opposition. Motion carried.

The next item on the agenda was West Fargo Comprehensive Plan Steering Committee

Larry indicated that last time there were about 19 representatives. Due to City growth, the commission may consider having 5-6 residents, rural property representatives. Chair Lenzmeier stated that it would be good to spread out the representatives to get a cross section of the City. Steven stated that engineering has been putting together meetings with different neighborhoods, separated into about 20 sections.

Commissioner Gustofson asked if the steering committee meetings would be open to the public and how often would they meet? Larry stated that there would be committee meetings, focus groups and from the information obtained at those informal meetings, public meetings would be held. There would be about 6 meetings over the next year.

Commissioner Holzmer asked what needed to be decided. Larry stated that they should decide amongst themselves, who would serve as the Planning & Zoning Commission representatives. Commissioner Gustofson and Keller indicated they were interested. Chair Lenzmeier indicated he would also be willing to serve. Commissioner Holzmer indicated he would be willing to serve as an alternate should any of the others not be able to attend meetings.

Commissioner Nelson asked if anyone from the local business community would be on it. Larry stated someone from the Chamber and Economic Development Advisory Committee. Commissioner Nelson recommended having a West Fargo Businessperson on the committee vs. the Chamber and suggested Dan Walerius from Gremada.

Discussion was held on the importance of getting a mix of residents. Chair Lenzmeier asked about the developer. Larry stated that last time it was Wally Tintes. Bruce Clapham was suggested as a possible representative.

The next item on the agenda was an updated zoning map. Larry stated that the last one was updated in 2003.

Commissioner Nelson made a motion to schedule a public hearing on the zoning map for December 11, 2006. Commissioner Gustofson seconded the motion. No opposition. Motion carried.

Commissioner Gustofson made a motion to adjourn. Commissioner Keller seconded the motion. Meeting adjourned.