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Sharon Schacher, Finance Director
Larry M. Weil, Planning Director
Wanda J. Wilcox, City Assessor
Dorinda Anderson, Business Development Director
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West Fargo Planning and Zoning Commission
December 11, 2006 at 7:00 P.M.
West Fargo City Hall

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

Members Absent: Kim Keller

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Mike Staber, Michelle & Mike Perius, Tom Kenville, Scott Bakko, Keith and Judy Stroh, Nancy and Bernard Fletcher, Larry Smith

The meeting was called to order by Chair Lenzmeier.

Commissioner Potter made a motion to approve the November 13, 2006 minutes as printed. Commissioner Nelson seconded the motion. No opposition Motion carried.

Chair Lenzmeier opened public hearing A06-66 Armour Industrial Park 3rd Addition, a subdivision in the NW¹/₄ of Section 5, T139N, R49W, City of West Fargo, North Dakota.

Larry Weil reviewed the following information from the staff report:

The property is located along the east side of Armour Street and south of 8th Avenue NW and the site was previously used by Precision Machine. The applicant proposes platting the property to provide for a clear legal description and is purchasing the property for the purposes of expanding a manufacturing facility in the community.

The Preliminary Plat shows 40' for right-of-way for the east side of Armour Street. The minimum amount of right-of-way for commercial or industrial properties under the Subdivision Ordinance is 40' for each side. The Kost Second Addition to the north shows 40' of street right-of-way on the east side.

The applicant brought to the attention of the City that the current address of the property is inappropriate. The address was assigned years ago by the City of Riverside. When reviewing the addresses for the area, a number of addresses follow the Riverside addressing scheme and are inappropriate. The Police Department has reviewed the existing addresses and recommends that corrective measures be taken to avoid emergency response issues in the future.

City Departments were notified and no comments were received.

Staff recommends approval with the following conditions:

1. An Attorney Title Opinion is received.
2. Screening is provided for any outdoor storage areas.
3. A drainage plan is completed and approved by the City Engineer.
4. A certificate is received showing that taxes are current.

5. Necessary easements are placed on the Final Plat.

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

Chair Lenzmeier asked for clarification regarding the addressing concerns. Larry stated that it's not just this property, but it affects about half a dozen businesses, a dozen properties. We've drafted a letter to businesses regarding the addressing issues.

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

Chair Lenzmeier opened public hearing A06-67 Planned Unit Development Amendment and Land Use Plan Amendment from Office Park to Retail Commercial for Lot 2 Block 3 of Eagle Run 8th Addition, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property, which is located west of Cass County Highway #17 and south of 34th Avenue West, was platted and zoned for office space in October of 2002. The lot was split in 2003, so the lot has about four feet less depth than originally platted. The property has restricted access as the only access proposed was from 36th Avenue West. The applicant also indicated a desire to have access onto 34th Avenue West and Sheyenne Street/Cass County Highway #17 which would require a traffic study; however, the applicant has not agreed to undertake a traffic study yet.

The applicant has had interest in developing the property with retail commercial uses. As such a request was submitted for Planned Unit Development and Land Use Plan amendments. The original developer had initially proposed a twin home planned unit development for the property, but requested a change in use to office which was approved by the City. The City proposed limited access restrictions on the subdivision plat along 34th Avenue West, because of the depth of the lot and potential impact on the 34th Avenue West/Sheyenne Street intersection. This was acceptable to the developer. Also, no access was allowed onto Sheyenne Street. The property is not well suited for retail commercial use because of limited access to the property; limited depth for retail commercial to accommodate setbacks, parking, and traffic circulation; potential traffic impact to residential areas, because of access onto local residential streets to the west and south. The applicant has indicated a desire to have at least right-in right-out access to 34th Avenue West and to Sheyenne Street to enhance the development potential of the property which is essential for retail commercial.

The proposed access connection to Sheyenne Street would be an access easement rather than a dedicated street. If approved the access to Sheyenne Street and possibly to 34th Avenue West should be controlled by formal access easements which give complete traffic control to the City for a certain distance from the street right-of-way. The distance from an arterial street should be a minimum of 120' according to City driveway/access ordinance standards and may be greater if recommended by an access study.

The City requires an access study prior to considering an access onto arterial streets, particularly when the development has the potential of affecting the functional integrity of the street. The developer has not committed to requesting the access study, covering the costs of undertaking the study, and providing the background information relating to the development of the property which is essential for proper study analysis.

It seems that the requested zoning and land use plan amendments are closely related to the access request. It would be appropriate to delay consideration on the amendments until the access study is completed, so that a well-informed decision can be made on the request.

Notices were sent area property owners. No comments have been received.

Staff recommends continuing the public hearing for the Planned Unit Development Amendment and Land Use Plan Amendment until development plans are submitted and a traffic study is completed.

Keith Stroh, 104 Golden Spike Road, stated that they'd be interested in the proposed use. They expressed concerns when this area was platted and zoned. When they moved to their home 10 years ago, there was just an empty field across the road from them. They don't need another business, a bar with lights on all night long, Harleys roaring at all hours.

Judy Stroh stated they'd also like access, if this site gets it. They own two acres and if they had access onto Sheyenne Street, they'd be able to divide their property for sale.

Commissioner Holzmer asked about access onto Sheyenne. Larry stated that there is access to 36th Avenue West, via 5th Street, but no direct access onto Sheyenne. Along 34th Avenue West, there's a cut in the median, but it's further to the west.

Commissioner Holzmer asked what kinds of things the traffic study looks at. Larry stated it looks at what kind of traffic is generated from the proposed use. But whoever does the study needs to have an idea as to what the use is going to be, how many trips are generated to accommodate the number of vehicles.

Commissioner Holzmer stated that there's a lot of traffic already and there doesn't need to be another access. He stated concern with people making u-turns along the new Eagle Run Plaza access.

Discussion was held regarding tabling or continuing. Commissioner Gustofson asked about timeframes for the traffic study. Larry stated that the developer could request a private consultant or the city could conduct a study. Commissioner Gustofson asked if it could be done by the next meeting.

Commissioner Gustofson made a motion to continue this item until the next meeting. Commissioner Potter seconded the motion. Commissioner Smedshammer, Gustofson, Lenzmeier, Nelson and Potter voted aye. Commissioner Holzmer voted nay. Motion carried 5-1.

Chair Lenzmeier opened public hearing A06-68 Variance to reduce the rear yard setback from 20-14' for a deck at 611 11th Street West (Lot 10, Block 1 of Westwynd 1st Addition), City of West Fargo, North Dakota.

Steven reviewed the following information from the staff report:

The property is located west of 8th Street West and north of 7th Avenue West. The use of the property is a single family home. The property owner is requesting a six-foot reduction in the required rear yard setback for a proposed deck. A variance would be required to allow the decreased setbacks.

The applicant has submitted an application and site plan, as well as the deck layout. This issue was discussed and an amendment to the zoning ordinance was made in 2004 allowing a 10 foot encroachment into rear yards for such things as decks, patios, balconies, etc. This decision was come to after looking at what other communities in the metro area allowed for in similar circumstances. At that time it was brought out that there were several of these structures throughout the city that would not conform to this amendment, at which time the property owners were required to take down or alter the existing deck structures such that they would comply with the setback requirements with the encroachment allowance. Also, there have been applications since that time for a variance to minimize the setback (or increase the encroachment allowance) for a deck-type structure which have been denied on the basis that they would be in direct contrast to the previous decision to require property owners to comply.

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 variances can be justified as the criteria listed above are not 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 R-1A 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 variance request for the proposed deck would be from the actions of the applicant.

Property owners within 150' were notified. We received a call from an adjoining property owner indicating that he does not have any concerns with the variance request.

Staff recommends denying the variance request for a reduction of the required setback for the deck on the basis that the request is not consistent with City ordinances and the variance is not justified under the criteria for granting a variance. By granting the variance, the City would be granting special favor to the applicant which is denied to others in the same district.

Applicant Michelle Perius stated that they were told by Moore Engineering that the setback was 15', not 20'. She stated that they're talking about a 4' x 6' walkway. She doesn't understand the difference between the placement of a deck vs. their pool. Their shed can be 3', but a deck can't. It doesn't make sense.

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

Chair Lenzmeier asked Larry to explain the setback requirements. Larry stated that accessory structures can be built in the rear yard, but cannot be connected to the main structure. Detached structures can be located within 3' of the rear property line, provided they're not on any easements.

Commissioner Smedshammer asked for clarification. The pool is in place, but the deck is not. Mrs. Perius stated that the deck is connected to the house by steps. They tried to follow the rules, but were misinformed by Moore Engineering. She distributed a letter to commissioners, which was supposed to have been included in the agenda packets. She indicated that she knows they have the option of going onto the City Commission next week.

Commissioner Gustofson stated that if the deck wasn't connected, then this wouldn't be an issue.

Commissioner Gustofson made a motion to deny the variance request. Commissioner Smedshammer seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-69 Conditional Use Permit for a concrete crushing operation and stockpiling of crushed concrete at 643 and 651 7th Avenue NW (Lots 13 & 14, Block 1 of The Yard's 2nd Addition), City of West Fargo, North Dakota.

Steven reviewed the following information from the staff report:

The property is located on 7th Avenue NW and 5th Street Court NW, to the east of County Highway 19. The property is bordered on the west and north by the Sheyenne River. This property was platted and zoned in 2005 to allow for heavy industrial uses. In order to stockpile crushed concrete on the site a Conditional Use Permit is required. The proposed use is consistent with City Plans and Ordinances.

The applicant was not aware that a Conditional Use Permit was required to stockpile crushed concrete and was operating illegally at which point he was sent a letter of notification requiring a CUP to continue operation. While in operation the city received multiple complaints of blowing dust and vibrations caused by the crushing plant from residents who live in the Chateau Cheyenne Addition directly across the river to the north. They were also concerned that the concrete crusher was being operated 24 hours a day.

Due to the fact that these lots are located along the Sheyenne River there is a building control line requiring that no equipment, buildings, or stockpiling be allowed within 100' of the riverbank to assure bank stabilization. If the crushing plan were located east or south of the stockpile the distance would help minimize the noise and vibrations felt from neighboring residential property owners. It would seem logical to minimize the height of any stockpiles to a height less than the height of the canopy of the trees along the Sheyenne River. This will help to minimize blowing dust. Also, the hours of operation could be limited within reason.

With reference to the criteria for granting conditional uses, the following is noted:

- Ingress and egress to the property are from 7th Avenue NW and 5th Street Court NW.
- The economic, noise, glare or odor effect of the proposed use on adjoining properties is an issue, but should be minimized by lowering the pile height below the tree line and placing the concrete crushing plant directly east or south of the

stockpile.

- The property is affected by the 100-foot building control line which is reflected on the subdivision plat. Applicant should not be allowed to operate or stockpile within the 100 foot building control line.

Notices were sent to adjacent property owners for review. No comments have been received other than the telephone calls and complaints by residential property owners objecting to the noise, vibrations and dust.

Staff recommends approval with the following conditions:

1. Stockpile heights are limited to no more than the height of the trees along the Sheyenne River.
2. No equipment storage, operation, or stockpiling be allowed within the 100 foot control line.
3. The concrete crushing plant is located directly east or south of the crushed concrete stockpile.

Steven indicated that item #4 listed in the staff report regarding hours of operation for concrete crusher being limited to 7am – 11pm, cannot be enforced by the Planning Staff and is a Police issue. He also stated that this is an industrial development and there were public hearings previously when this area was platted a few years ago.

Chair Lenzmeier asked Steven to show the commission on the map, where the pile of concrete is located.

Steven indicated that a letter was brought to the meeting this evening from an area resident.

Larry Smith, 406 Riverwood Drive, stated that this is a major health issue. Concrete dust blows onto his property. There are layers of it on his deck and car.

Bernard Fletcher, 404 Riverwood Drive, stated that the dust is so bad they have to leave. They're coughing. The BBQ grill and lawn have about a ¼" of dust that has hardened to concrete. They bought 3 air machines for the house. The noise goes all night long and the house and garage shake. Their grandchildren can't play outside.

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

Commissioner Holzmer asked about not being able to enforce the hours of operation.

Steven stated that the hours of operation are based on decibel levels taken from the property line. The Police Department has a decibel meter. The Planning and Zoning Commission doesn't have the authority to enforce the noise ordinance. He stated that the Police and Public Works Department had been out to the site. The Police Captain indicated he had received only one complaint and they had gone out on the individual's deck and couldn't hear it.

Applicant Mike Staber stated that they can move the crusher. They did have problems with dust during some colder days and had a windy day from the south. The dust issue is over. When he bought the property from the City, he told them what his intentions were. The site used to be a sewage treatment pond for Federal Beef. The concrete is from the "pits". They plan to keep moving to the west. The concrete piles have been there for 4 years.

Chair Lenzmeier stated that Mr. Staber has indicated a willingness to screen and plant more trees. The residents indicated that there are already trees. The dust hangs from the leaves.

Commissioner Holzmer asked if the County Health department had been to the site. Larry stated that both public works and Fargo Cass Public Health had been to the site.

Commissioner Gustofson asked if there is dust every day. Residents indicated there is dust right now. Commissioner Gustofson indicated that they probably won't crush again for a couple of years. Mr. Staber stated that the crushing was done for about 3 weeks and not over the weekends. They need at least 10,000 yards to make it worth the cost of renting the machine.

Commissioner Holzmer made a motion for approval subject to staff recommendations 1-3. Commissioner Nelson seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing Public Hearing – A06-70 Official West Fargo Zoning Map.

Steven reviewed the following information from the staff report:

The zoning map for the City was last updated in 2004. A number of rezonings have taken place since that time. The West Fargo Zoning Ordinance provides for the replacement of the Official Zoning Map

The staff has had an updated map developed showing the City and extraterritorial area. The rezonings which have taken place since 2004 have been placed on the map. A notice has been placed in the paper to inform the public that map revisions are being undertaken, and a public hearing is being held to address any zoned areas which might be questioned. To date we have not had any inquiries on the replacement map. We have had numerous calls in the past from people wishing to purchase an updated map.

There were no public comments. The hearing was closed.

Commissioner Nelson made a motion to approve the Amended Official Zoning Map. Commissioner Holzmer seconded the motion. No opposition. Motion carried.

The next item on the agenda was Comprehensive Plan Steering Committee.

Larry stated that we're continuing to work with COG. The City Commission has approved the format of the steering committee. We're still looking for a few residential representatives. The City Commission wants different areas of town and different income/demographic representatives to get a whole spectrum of the population.

Commissioner Nelson made a motion to adjourn. Meeting adjourned.