

ARLINGTON PLANNING & ZONING BOARD
MEETING MINUTES
JANUARY 10, 2008

The meeting was called to order at 7:00 p.m., Chairman Nagel presiding.

Members Present: Grabitske (arrived late), Haggemiller (arrived late), Hislop, Kreft, Mielke, Chairman Nagel, Pinske, Councilmember Curt Reetz

Members Absent: Kramer

Also Present: P&Z Administrator Cynthia Smith-Strack, Mike Chaves, Corey Hofferbert

Motion by Hislop, seconded by Pinske, and passed by unanimous vote to re-elect the following officers: Lowell Nagel-Chairperson, Arden Kreft-Vice Chairperson, Dwight Grabitske-Secretary.

It was the consensus of the Planning & Zoning Committee that the agenda stood approved as presented.

Motion by Reetz, seconded by Kreft, and passed by unanimous vote to approve the minutes from the December 6, 2007 meeting as presented.

Chairman Nagel recessed the regular meeting to hold a public hearing.

Conditional Use Permit Amendment: 306 5th Avenue NW (H&S Auto)

Chairman Nagel called to order the public hearing regarding the request from Mike Chaves and Corey Hofferbert (H&S Auto), 306 5th Avenue NW, to amend their Conditional Use Permit. PZ Adm. Smith-Strack explained that H&S Auto is proposing to increase the volume of used vehicle display area on the subject property to allow for 12 vehicles and to retain ancillary auto detailing facilities, but abandon use of the fueling facilities. She stated that the original CUP allowed for 5 vehicles to be placed on the lot at one time. It was her recommendation to allow the amendment as proposed by the applicant with the following conditions:

- 1) Original CUP conditions remain;
- 2) Total volume of used cars stored on the lot at one time (both indoor/outdoor) shall not exceed 12 vehicles;
- 3) Vehicles shall be setback a minimum of five (5) feet from the front property line;
- 4) Existing fuel facility shall be discontinued/abandoned, and fuel pumps/underground storage tanks removed by June 30, 2008;
- 5) Discontinue small display area for landscaped block in the front yard.

It was suggested to add the conditions of closing the Hwy 5 access (entrance) and to not allow vehicles on the north side of the building (keep in line with the building frontage) so as not to cause line of sight issues at the intersection (5th Avenue and Hwy 5). Some concern was expressed about keeping things fair (similar to conditions for Liberty Station across the street). Smith-Strack read an email from Jim Heiland, the owner of Liberty Station, expressing concern about the number of vehicles to be displayed.

Chairman Nagel adjourned the public hearing and reconvened the regular meeting.

Hislop introduced the following resolution and moved for its adoption:

PZ RESOLUTION NO. 1-2008

A RESOLUTION RECOMMENDING APPROVAL OF AN AMENDED CONDITIONAL USE PERMIT FOR A USED PASSENGER AUTOMOBILE SALES ESTABLISHMENT WITH ANCILLARY AUTO DETAILING FACILITIES AT 306 5TH AVENUE NW

WHEREAS, Mr. Mike Chaves and Mr. Corey Hofferbert have submitted a request to amend a Conditional Use Permit to operate a used automobile sales establishment with ancillary auto detailing facilities at 306 5th Avenue Northwest; and

WHEREAS, Section 7, Subd. 3 of the Arlington Zoning Ordinance provides for conditional uses allowed in the B-1 Service Business District; and

WHEREAS, notice of a public hearing to accept input on the CUP request was published in the official newspaper on December 27, 2007 and sent to property owners within 350 feet of the property; and

WHEREAS, the Planning and Zoning Committee conducted a public hearing on the CUP request on January 10, 2008 and accepted input on the CUP request; and,

NOW, THEREFORE, BE IT RESOLVED BY THE ARLINGTON PLANNING AND ZONING COMMITTEE THAT: The Planning Committee does hereby recommend the City Council of the City of Arlington approve the CUP to operate a used automobile sales establishment with ancillary auto detailing facilities at 306 5th Avenue Northwest subject to the following:

1. Uses of the subject property shall be limited to the following:
 - a. A minimum of one and a maximum of two of the three existing service bays will be used for the licensed sale of used, operable, passenger automobiles. The total volume of used cars stored on site both indoors and outside shall at no time exceed twelve (12) vehicles. The display of used vehicle sales is limited to the areas as represented on the site plan submitted with the application for CUP amendment. The display of used vehicles shall be setback a minimum of five (5) feet from the front property line. Loading and unloading of used cars shall occur between the hours of 7 a.m. and 10 p.m. The loading and unloading of used cars shall occur directly on site and shall not occupy the public right of way.
 - b. One of the three existing service bays will be used to “detail” vehicles. “Detailing” shall be defined as and limited to performing: scratch and oxidation removal, buffing, interior and exterior washing or shampooing, molding repair/replacement, paint overspray removal, stain removal, non-spray touch up painting, power washing, hand drying, road tar removal, polishing or deodorizing of any type of passenger vehicle or truck. Hazardous waste containment and/or disposal shall comply with the building code and state/federal law.
 - c. The existing fuel facility shall be discontinued and abandoned. The fuel pumps and underground storage tanks shall be removed by June 30, 2008.
 - d. A storage area for landscaped bricks not exceeding ten feet by ten feet may be located on the east (rear yard) side of the existing building. The landscape block storage area shall not at any time exceed 100 square feet in area. The landscape block shall be stored in a manner prohibiting the harboring of rodents.
 - e. An “L” shaped opaque chain link fence (i.e. fence with lathes/slats) not exceeding six feet in height may be constructed south (side yard) of the existing structure. The fence shall be placed a maximum of five feet in front of the building line but not in front of the structure and terminate in the middle of the rear yard. The fence shall not include barbed or razor wire or have advertising attached to it. The fence shall not obstruct drainage on the site.
 - f. A small display area for landscaped block which was approved to be located in the front yard under the original CUP may no longer be located in the front yard.
2. The applicant/property owner must submit details (i.e. location, type and volume) of signage to the City for approval prior to placing any signage on site. Signage must comply to the requirements of the B-1 Service Business District.

3. This conditional use permit is in effect for the property at 306 5th Avenue NW and assigned to the current and/or any future owner of the property. The conditional use permit may be revoked by the City following written notice to the property owner if the conditions of the permit as listed herein are not met and/or maintained. The conditional use permit will expire if/when the use of the property is changed.
4. The applicant shall provide evidence to the City of and maintain compliance with any federal or state laws or regulations which are applicable (i.e. collection/disposal of hazardous materials, etc. on site).
5. No changes in the approved plans or scope of the conditional use shall be undertaken without prior approval of those changes by the City. Proposed permit modifications shall be classified as major or minor, as determined by the Zoning Administrator. Major permit modifications may include, but shall not be limited to, hours of operation, number of employees, expansion of structures and/or premises, operational modifications resulting in increased traffic, and the like.
6. The CUP shall be recorded with the Sibley County Recorder's Office.

The motion for the adoption of the foregoing resolution was duly seconded by Mielke and upon poll being taken thereon the following voted in favor thereof: Grabitske, Haggemiller, Hislop, Kreft, Mielke, Nagel, Pinske, Councilmember Reetz; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Kramer.

Adopted by the Planning & Zoning Committee of the City of Arlington this 10th day of January, 2008.

Signed: /s/ Lowell Nagel
Chairperson

Attest: Cynthia Smith-Strack
Planning & Zoning Administrator

Whereupon the resolution was declared duly passed and executed.

Chairman Nagel recessed the regular meeting to hold a public hearing.

Ordinance 221: Ordinance Amending Subdivision Ordinance Relating to Premature Subdivisions

Chairman Nagel called to order the public hearing regarding proposed Ordinance 221 – An Ordinance Amending Ordinance 168, the Arlington Subdivision Ordinance to Allow for Administration of said Ordinance Relating to Premature Subdivisions, Denial of plats, Variances and General Ordinance Administration by Addition Section 11. Smith-Strack reviewed the proposed ordinance.

Chairman Nagel adjourned the public hearing and reconvened the regular meeting.

Mielke introduced the following resolution and moved for its adoption:

PZ RESOLUTION NO. 2-2008

A RESOLUTION RECOMMENDING THE CITY COUNCIL APPROVE ORDINANCE 221, AN ORDINANCE AMENDING ORDINANCE 168, THE ARLINGTON SUBDIVISION ORDINANCE TO ALLOW FOR ADMINISTRATION OF SAID ORDINANCE RELATING TO PREMATURE SUBDIVISIONS, DENIAL OF PLATS, VARIANCES AND GENERAL ORDINANCE ADMINISTRATION BY ADDING SECTION 11.

WHEREAS, the City of Arlington placed Ordinance 168 into effect several years ago; and

WHEREAS, the Arlington Planning Commission finds portions of Ordinance 168 are not up to date; and

WHEREAS, The City of Arlington initiated an amendment Ordinance 168, the Arlington Subdivision Ordinance to allow for administration of said Ordinance relating to Premature Subdivisions, denial of plats, variances and general Ordinance administration by adding Section 11; and

WHEREAS, the Arlington Planning Commission has reviewed and studied the issue and developed text to be included in Ordinance 221; and

WHEREAS, a public hearing was properly noticed and held on January 10, 2008 by the City of Arlington Planning Commission; and

WHEREAS, the proposed ordinance is itemized in Exhibit A which is attached to this resolution;

NOW, THEREFORE, BE IT RESOLVED, that the Arlington Planning Commission recommends the City Council approve Ordinance 221, a copy of which is attached as Exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Reetz and upon poll being taken thereon the following voted in favor thereof: Grabitske, Haggemiller, Hislop, Kreft, Mielke, Nagel, Pinske, Councilmember Reetz; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Kramer.

Adopted by the Planning & Zoning Committee of the City of Arlington this 10th day of January, 2008.

Signed: /s/ Lowell Nagel
Chairperson

Attest: Cynthia Smith-Strack
Planning & Zoning Administrator

Whereupon the resolution was declared duly passed and executed.

**EXHIBIT A
CITY OF ARLINGTON
ORDINANCE NO. 221**

**AN ORDINANCE AMENDING ORDINANCE 168, THE ARLINGTON SUBDIVISION
ORDINANCE TO ALLOW FOR ADMINISTRATION OF SAID ORDINANCE RELATING TO
PREMATURE SUBDIVISIONS, DENIAL OF PLATS, VARIANCES AND GENERAL
ORDINANCE ADMINISTRATION BY ADDING SECTION 11.**

SECTION 11: ORDINANCE ADMINISTRATION

SUBDIVISION 1. FINDINGS OF FACT.

- A. Planning Commission Recommendation. The Planning Commission upon making its formal recommendation to the City Council under this Title and pertaining specifically to the request for subdivision of land shall make said recommendation through resolution of the Commission. The recommending resolution shall contain findings of fact pursuant to this Ordinance.
- B. City Council Action. The City Council upon taking a formal action under this Title and pertaining specifically to the request for subdivision of land shall do so by resolution of the City Council. The resolution shall contain findings of fact pursuant to the following and as outlined in this Title.
- C. Recommendation/official action pertaining to requests for variance from this Title shall include findings of fact pursuant to those identified in this Title.
- D. Premature Subdivisions. Any preliminary plat of a proposed subdivision deemed premature for development shall be denied by the City Council. A subdivision may be deemed premature should any one or more of the conditions set forth in the following provisions exist. The burden shall be upon the applicant to show that the proposed subdivision is not premature.
 1. Lack of adequate drainage: A condition of inadequate drainage shall be deemed to exist if:
 - a. Surface or subsurface water retention/detention and runoff is such that it constitutes a danger to the structural security of the proposed development or flood of the subdivision or downstream property.
 - b. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 - c. The proposed site grading and development will cause siltation on downstream land.
 - d. Factors to be considered in making these determinations shall include, but shall not be limited to: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support

surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

2. Lack of Adequate Water Supply: A proposed subdivision shall be deemed to lack an adequate water supply if:
 - a. There is inadequate capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
 - b. The orderly extension of municipal drinking water is not feasible or is not proposed as part of subdivision improvements.
 3. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - a. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of the City Engineer, Sibley County Engineer, and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use; or
 - b. The traffic volume generated by the proposed subdivision would create unreasonable traffic congestion or unsafe conditions on roadways existing at the time of the application or proposed for completion.
 4. Lack of Adequate Waste Disposal Systems: A proposed subdivision shall be deemed to lack adequate waste disposal systems if:
 - a. There is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
 - b. The orderly extension of municipal sanitary sewer is not feasible or is not proposed as part of subdivision improvements.
 5. Provision of Public Improvements/Services: If public improvements, such as recreational facilities, utility facilities, streets and utilities and/or public administration and/or public protection services such as police and fire service reasonably necessitated by the subdivision and which must be provided at public expense, cannot be reasonably provided within the next two (2) fiscal years the proposed subdivision shall be deemed premature.
 6. Threat to Environmentally Essential Areas: The proposed subdivision is inconsistent with policies and standards of the City, the County, the State, or Federal Government relating to environmentally sensitive areas and protections thereof.
 7. Inconsistency With Comprehensive Plan: The proposed subdivision is inconsistent with the purposes, objectives and recommendations of the duly adopted Comprehensive Plan of Arlington, as may be amended.
 8. Inconsistent with Capital Improvement Plans. A proposed subdivision shall be deemed inconsistent with capital improvement plans when improvements and/or services necessary to accommodate the proposed subdivision have not been programmed in the City, County or other regional capital improvement plans. The City Council may waive this criterion when it can be demonstrated that a revision to capital improvement programs can be accommodated.
- E. Disqualification/Denial of Plats. The City Council may deny the subdivision if it makes any one or more of the following findings:
1. That the proposed subdivision qualifies as a premature subdivision under Section 11.1(D) of this Title.
 2. If deemed a 'premature subdivision' the proposed subdivision shall be denied.
 3. That the proposed subdivision is in direct conflict with adopted applicable local control (e.g. Zoning Ordinance; Subdivision Ordinance) and/or general or specific official plans of the City, County or Region.
 4. That the physical characteristics of the site, including but not limited to, topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design, or use contemplated.
 5. That the site is not physically suitable for the proposed density of development.
 6. That the design of the subdivision or the type of improvements are likely to cause serious public health concerns.
 7. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage.

8. That the design of the subdivision or the type of improvements will conflict with easements of record or with easements established by judgment of a court.
9. That the proposed subdivision, its site, or its design adversely affects the flood-carrying capacity of the floodway, increases flood stages and velocities, or increases flood hazards within the floodway fringe or within other areas of the City.
10. That the proposed subdivision is inconsistent with the policies and standards for defined shoreland and/or wetland.

SUBDIVISION 2. CONDITIONAL APPROVAL.

- A. The City may condition approval on the construction and installation of sewers, streets, electric, gas, drainage and water facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the municipality of a cash deposit, certified check, irrevocable letter of credit, or bond in an amount and with surety and conditions sufficient to assure the municipality that the utilities and improvements will be constructed or installed according to the specifications of the municipality. The City may also condition approval on compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions of approval.
- B. The City may not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee.
- C. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with City installed improvements of the type described in MN. Statute 429.

SUBDIVISION 3. VARIANCES, CITY COUNCIL APPROVAL, STANDARDS.

- A. Findings: The City Council may approve a variance from the minimum standards of this Ordinance (not procedure provisions) when, in its opinion, exceptional and undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable to the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be approved when the City Council finds that each and every one of the following apply:
 1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his/her land.
 2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which the property is situated.
 3. That the granting of the variance will not increase the flood hazard or flood damage potential.
 4. That the use proposed by the applicant would not result in a stage increase violating Minnesota Statutes 104 and 105, as amended from time to time, and any applicable requirements imposed by FEMA.
 5. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
 6. Hardships relating to economic difficulties shall not be considered for the purpose of granting a variance.
 7. That the hardship is not a result of an action or actions by the owner, applicant, or any agent thereof.
 8. The variance sought is the least variance required.
- B. Procedures:
 1. Request for variances, as provided within this Section, shall be filed with the City on an official application form. Such application shall be accompanied by a fee as provided for by City Council ordinance. Such application shall also be accompanied by five (5) large scale copies and ten (10) reduced scale (not less than 11" x 17") copies of detailed written and graphic materials fully explaining the proposed change, development, or use. If, in the opinion of the Zoning Administrator, reduced scale drawings are determined to be illegible, the submission of larger scale materials shall be required. The scale of such materials shall be the minimum necessary to endure legibility. The request for variance shall be placed on the agenda of the Planning Commission meeting occurring after the date of submission of the application. The request shall be considered as being officially submitted when all the information requirements are complied with.
 2. Proof of Ownership or Authorization: The applicant shall supply proof of title and the legal description of the property for which the variance is requested, consisting of an abstract of title or registered property abstract currently certified together

with any unrecorded or equitable ownership interest and, if applicable, supply documented authorization from the owner(s) of the property in question to proceed with the requested variance.

3. Upon receipt of said application, the City shall set a public hearing following proper hearing notification as applicable. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least ten (10) days prior to the hearing. Written notification of said hearing shall be mailed to surrounding area property owners at least ten (10) days prior to the hearing. Requests affecting and located within platted areas of the City shall be noticed to all property owners at least ten (10) days prior to the hearing. Requests affecting and located within nonplatted areas of the City shall be noticed to all property owners within three hundred fifty (350) feet of the outside boundary of the property in question. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the record of the proceeding.
4. For properties within the Shoreland Overlay Districts and/or the Floodway or Flood Fringe Overlay Districts, the City shall submit to the Minnesota Department of Natural Resources Area Hydrologist a copy of the application for proposed variances sufficiently in advance so that the Department will receive at least ten (10) day's notice of the hearing.
5. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section.
6. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the Planning Commission.
7. The Planning Commission, City Council and/or Zoning Administrator shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relations to all pertinent sections of this Ordinance. Failure of an applicant to supply all necessary supportive information may be grounds for denial of the request.
8. The applicant or a designated representative thereof shall appear before the Planning Commission and/or City Council to answer questions concerning the proposed variance.
9. The City Council shall reach a decision within sixty (60) days after the receipt of a complete application.
10. The City Council shall not act upon a variance or appeal until they have received a staff report, with findings of fact and a recommendation, and a Planning Commission recommendation to the City Council.
11. Whenever an application for a variance has been considered and denied by the City Council, a similar application and proposal for the variance affecting the same property shall not be considered again by the City Council for at least one (1) year from the date of its denial except as follows:
 - a. Applications are withdrawn prior to the City Council taking action on the matter.
 - b. If the City Council determines that the circumstances surrounding a previous application have changed significantly.
 - c. If the City Council decides to reconsider the matter by a majority (2/3rd) vote of the entire City Council, whether present, absent, or abstaining.

SUBDIVISION 4. AMENDMENTS.

The provisions of this Ordinance may be amended by the City Council following a legally advertised public hearing before the Planning Commission and in accordance with the law, including the rules and regulations of any applicable state or federal agency.

SUBDIVISION 5. FEES.

- A. Fees and charges, as well as expenses incurred by the City for engineering, planning, legal, and other services related to the processing of applications under this Ordinance shall be established via ordinance approved by the Council and collected by the City Administrator for deposit in the City's accounts. Fees shall be established for the processing of requests for platting, major and minor subdivisions, review of plans, and such other subdivision-related procedures as the Council may from time to time establish. The Council may also establish charges for public hearings, special meetings, or other such Council actions as are necessary to process applications.
- B. Such fees, charges and estimated expenses (as well as a deposit, if so required by the Zoning Administrator) shall be collected prior to City action on any application. All such applications shall be accompanied by a written statement between the City and the applicant/landowner (when the applicant is not the same person or entity as the landowner, both the landowner and the applicant must sign the agreement) whereby the applicant/landowner agrees to pay all applicable fees, charges and expenses as

set by the Council as provided above, and which allows the City to assess the above fees, charges and expenses against the landowner if such monies are not paid within thirty (30) days after a bill is sent to the applicant/landowner.

- C. These fees shall be in addition to building permit fees, inspection fees, trunk storm water facility costs, zoning fees, charges, expenses and other such fees, charges and expenses currently required by the City or which may be established in the future.

SUBDIVISION 6. VIOLATION/ENFORCEMENT.

- A. Any person violating any provision of this Title shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not exceeding ninety (90) days, or both. Each day a violation is allowed to continue, it shall be construed as a separate offense. Compliance with the terms of this ordinance may be obtained by injunctive relief in proceedings instituted by the City in a court of competent jurisdiction.
- B. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including but not limited to, the issuance of administrative citations as authorized by the City of Arlington.

Discussion resumed (from previous meeting) on proposed Ordinance 220 – An Ordinance Repealing and Replacing Section 14 of Ordinance 169, The Arlington Zoning Ordinance, Relating to Non-Conforming Uses within the City. Various questions about conforming uses were asked and answered.

Hislop introduced the following resolution and moved for its adoption:

PZ RESOLUTION NO. 3-2008

A RESOLUTION RECOMMENDING THE CITY COUNCIL APPROVE ORDINANCE 220, AN ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE, RELATING TO NON-CONFORMING USES WITHIN THE CITY.

WHEREAS, the City of Arlington placed Ordinance 169 into effect several years ago; and

WHEREAS, the Arlington Planning Commission finds portions of Section 14 of Ordinance 169 are not up to date; and

WHEREAS, the City of Arlington initiated a request to repeal Section 14 of the Arlington Zoning Ordinance replacing it with language included in Ordinance 220 relating to the regulation of non-conforming uses with the City of Arlington; and

WHEREAS, the Arlington Planning Commission has reviewed and studied the request and developed text to be included in Ordinance 220; and

WHEREAS, a public hearing was properly noticed and held on December 6, 2007 by the City of Arlington Planning Commission; and

WHEREAS, the proposed ordinance is itemized in Exhibit A which is attached to this resolution;

NOW, THEREFORE, BE IT RESOLVED, that the Arlington Planning Commission recommends the City Council approve Ordinance 220, a copy of which is attached as Exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Haggemiller and upon poll being taken thereon the following voted in favor thereof: Grabitske, Haggemiller, Hislop, Kreft, Mielke, Nagel, Pinske, Councilmember Reetz; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Kramer.

Adopted by the Planning & Zoning Committee of the City of Arlington this 10th day of January, 2008.

Signed: /s/ Lowell Nagel
Chairperson

Attest: Cynthia Smith-Strack
Planning & Zoning Administrator

Whereupon the resolution was declared duly passed and executed.

**EXHIBIT A
CITY OF ARLINGTON
ORDINANCE NO. 220**

**AN ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 169, THE ARLINGTON ZONING
ORDINANCE, RELATING TO NON-CONFORMING USES WITHIN THE CITY.**

SECTION 14: NON-CONFORMING USES

SUBD. 1. PURPOSE AND INTENT.

1. It is the purpose of this section to provide for the regulation of non-conforming uses of land, non-conforming structures and non-conforming lots of record and to specify requirements, circumstances and conditions under which non-conforming uses of land, non-conforming structures and non-conforming lots of record may be operated and maintained.
2. This Section is intended to accomplish the following:
 - A. Recognize the existence of non-conforming uses of land and non-conforming structures which were lawful when established but which no longer meet all ordinance requirements;
 - B. Discourage the enlargement, expansion, intensification or extension of any nonconforming use of land or non-conforming structure or any increase in the impact of a nonconforming use of land or a non-conforming structure on adjacent properties;
 - C. Regulate the repair, replacement, restoration, and improvement of non-conforming uses and structures to prevent and abate nuisances and to protect the public health, safety, or welfare;
 - D. Encourage the elimination of non-conforming uses of land and/or non-conforming structures or reduce their impact on adjacent properties;
 - E. Eventually bring all non-conforming uses of land and non-conforming structures and uses into conformity.

SUBD. 2. DEFINITIONS.

For the purposes of this section, the following terms and phrases have the meanings given to them.

1. "Legal non-conformity" or "non-conforming use" means any land use, structure, physical form of land development, lot of record or sign legally established before the effective date of this ordinance or subsequent amendment to it that would not be permitted by, or is not in full compliance with, the regulations of this ordinance. A non-conformity or non-conforming use is one of three types: non-conforming land use, non-conforming structure or non-conforming lot of record.
2. "Non-conforming land use" means an activity using land, buildings, and/or structures for a purpose that was legally allowed when established but that is not currently allowed as a use in the zoning district in which it is located.
3. "Non-conforming structure" means a legal non-conformity other than a non-conforming land use that complied with ordinance standards at the time it was established but that does not currently conform to an ordinance standard such as height, setback, or size.
4. "Non-conforming lot of record" means an existing base lot of record at the time of approval of this Ordinance that is non-conforming in terms of lot area or lot width or depth and that has not at any time been the site of a principal use/structure.
5. "Expansion," "enlargement," or "intensification" means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city.
6. "Improvement" means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.
7. "Replacement," "reconstruction," or "restoration" means construction that exactly matches preexisting conditions.

SUBD. 3: STANDARDS.

1. Non-Conforming Uses of Land.

- A. A nonconforming use of land and conforming structures used for a non-conforming use of land may be used and continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion.
 - B. There may be no expansion, enlargement, or intensification of any non-conforming use of land.
 - C. Change of Non-Conforming Use of Land. A non-conforming use cannot be changed to another non-conforming use. Whenever a non-conforming use has been changed to a conforming use it shall not thereafter be changed to a non-conforming use of a less restricted district.
 - D. Discontinuance of Non-Conforming Use of Land. If a non-conforming use of land is discontinued or ceased for a period of one (1) year or more, or if a nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days of when the property is damaged; then, the subsequent use of such building or land shall conform thereafter to the uses allowed in the district in which it is located.
 - E. If a non-conforming use is superseded or replaced by a permitted use, the non-conforming status of the premises and any rights which arise under the provisions of this section terminate.
 - F. If replacement, reconstruction, or restoration of a legal non-conforming land use is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed. Work that would not meet this requirement and any work that would be an improvement to a non-conforming land use may not be undertaken unless a conditional use permit has been issued for the property. The city may impose conditions in a conditional use permit to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property.
 - G. Notwithstanding the prohibitions contained in the foregoing paragraphs of this subdivision, if approved by the City Council a non-conforming use may be changed to another nonconforming land use of less intensity if it is in the public interest. In all instances the applicant has the burden of proving that the proposed land use is less intense than the exiting nonconforming land use.
2. Non-Conforming Use of Structures.
- A. A nonconforming structure may be used and continued, including through repair, replacement, restoration, maintenance, or improvement.
 - B. Expansion, Enlargement, or Intensification of a Non-conforming Structure. A nonconforming use of a building may not be expanded, enlarged or intensified by adding onto the building. Except that expansion, enlargement or intensification of conforming aspects of a non-conforming structure are exempt from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.
 - C. Non-Conforming Structure, Structural Change. An existing non-conforming structure devoted to a non-conforming use may not be enlarged, extended, reconstructed, moved, or structurally altered except in changing the use of the structure to a conforming use.
 - D. Maintenance of Non-Conforming Structure. Maintenance of a building or other structure will be permitted when it includes necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming building or use.
 - E. Residential Alterations. Alterations may be made to a residential building containing nonconforming residential units when they will improve the livability and safety of such units provided, however, that they do not increase the number of dwelling units in the building. The construction and alteration of garages and accessory buildings is also permitted, as long as the improvements conform with the zoning requirements for both the zoned use of the property, and the non-conforming use.
 - F. Continuation of Non-Conforming Use of Structure. The lawful use of a non-conforming structure existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the district provisions herein, unless the use ceases for a period of one (1) year or the non-conforming structure is destroyed by fire or other peril to the extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days of when the property was damaged.
 - G. Restoration Of Non-Conforming Structure After Destruction. Any non-conforming building or structure damaged greater than fifty (50) percent of its market value by fire, collapse, explosion or acts of God, or public enemy, shall not be restored or reconstructed and used as before such destruction if no building permit is issued within 180 days after the damage occurred; but, if fifty (50) percent or less of its market value is damaged it may be restored, reconstructed or used as before provided that it is done within twelve (12) months of the happening.

- H. If replacement, reconstruction, or restoration of a legal non-conforming structure is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed, except for internal improvements and improved materials used to replace roof surfaces, siding, windows, doors, and similar components. Work that would not meet this requirement or any other improvement to a non-conforming development may not be undertaken unless a conditional use permit is issued. The city may impose conditions in its approval to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property.
 - I. Signs. Signs pertaining to or advertising products sold on the premises of a nonconforming building or use may be continued only when the non-conforming use is permitted to continue and such signs shall not be expanded in number, area, height, or illumination. New signs shall not exceed the maximum allowed under the City's sign ordinance, and may be erected only after all other signs existing at the time of the adoption of this Ordinance have been removed. The accumulated square footage of new signs installed shall not exceed the square footage of signs previously on site, or the amount allowed in the City's sign ordinance, whichever is less. New signs may not be illuminated unless the previous sign was illuminated, but flashing intermittent or moving illumination shall not be permitted.
 - J. Buildings Under Construction and Building Permits Granted Prior to Adoption of Ordinance. Any proposed structure which will, under this Ordinance, become non-conforming but for which a building permit has been lawfully granted prior to the effective date of this Ordinance, may be completed in accordance with the approved plans; provided construction is started within sixty (60) days of the effective date of this Ordinance, is not abandoned for a period of more than one hundred twenty (120) days, and continues to completion within two (2) years. Such structure and use shall thereafter be a legally nonconforming structure and/or use.
3. Non-Conforming Lots of Record.

An existing lot of record that is non-conforming and that is not improved with a principal use is entitled to be developed with a principal use providing setbacks can be achieved; unless the subject parcel has been in common ownership with an abutting lot or parcel of land, or if it has been part of a larger parcel of land, at any time after adoption of the standard that causes the lot or land to be non-conforming in which case the non-conforming lot of record is not entitled to be developed with a principal use. This provision shall apply even though a lot entitled to a principal use fails to meet the zoning requirements for area or width, or both, that are generally applicable in the district. If, two (2) or more contiguous lots in any district are under the same ownership, and any individual lot does not meet the area and width requirements of this Ordinance, the lot must not be considered as a separate parcel or land for the purpose of sale or development. The lot must be combined with the one (1) or more contiguous lots so they equal one (1) or more parcels of land, each meeting the area and width requirements of this Ordinance.

SUBD. 4 BURDEN OF PROOF.

A person who wishes to take advantage of the rights granted to a legal non-conformity has the burden of proving the status as a legal non-conformity by clear and convincing evidence.

Discussion (from previous meetings) resumed on accessory structures. Smith-Strack stated that she has combined the information into a draft ordinance amendment, which was reviewed in detail.

Motion by Haggemiller, seconded by Grabitske, and passed by unanimous vote to hold a public hearing at the February meeting for an amendment to the Zoning Ordinance related to accessory structures in R-1 and R-2 zones.

Some discussion was held on getting the zoning map updated.

Smith-Strack handed out a flyer for some upcoming conferences related to Planning & Zoning.

The monthly and year-end Building Permit reports were reviewed.

Motion by Pinske, seconded by Mielke, and passed by unanimous vote to adjourn the meeting at 8:00 pm.