

**CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA**

RESOLUTION 2016 – 16

RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING DEVELOPMENT AGREEMENT, AMENDED CONDITIONAL USE PERMIT, AMENDED INTERIM INDUSTRIAL WASTEWATER DISCHARGE PERMIT, VARIANCES, AND SITE PLAN FOR POUCHTEC INDUSTRIES, LLC

WHEREAS, the City of Foley received a development request from Pouchtec Industries, LLC (the “Developer”); and

WHEREAS, the Developer owns the property in the City of Foley (“Existing Property”) and holds a conditional use permit (CUP) for its current operation on the Existing Property. The Developer has presented the City with a proposal for the purchase of property located within and owned by the City of Foley (“Additional Property”) to construct a two phase, 48,600 square foot expansion to Developer’s existing building for the manufacturing and warehousing of food products in flexible packaging; and

WHEREAS, Developer’s proposal includes the purchase of land from the City, the vacation of 4th Avenue West, and the acquisition of certain excess right of way if it becomes available from Benton County; and

WHEREAS, the Developer wishes to amend its existing CUP to allow for the expansion; and

WHEREAS, the Developer requests a variance from the parking lot standards due to the location of an underground pipeline, a variance from certain setbacks in the event that the excess right of way is not immediately available or cannot be acquired, and a variance from the maximum driveway width.

NOW THEREFORE, the Foley City Council has considered the development proposal and finds as follows:

FINDINGS OF FACT

Development Agreement

1. Developer and City have negotiated a development agreement that lays out the terms of the sale of the Additional Property, wastewater concerns resulting from the expansion, site conditions, municipal improvements and related fees, and land use approvals.
2. The development agreement serves the public’s best interest by making commitments that facilitate growth and development in the City while obtaining obligations and

representations from the Developer that protect the City's property interests and municipal infrastructure.

Wastewater Discharge Permit

1. The City is the owner and operator of a municipal wastewater treatment facility. PouchTec currently holds a permit to discharge to the wastewater treatment facility.
2. PouchTec's expansion requires an Amended Interim Permit. The City believes that discharge limits imposed by the Amended Interim Permit will not interfere with the function of the City's wastewater treatment facility or impair the City's ability to comply with its NPDES permit for the wastewater treatment facility.
3. The City agrees to revisit the limits in the Amended Interim Permit with PouchTec after collecting six months of additional monitoring information in coordination with PouchTec.

Conditional Use Permit

1. The Developer holds a valid CUP for its current operation on the Existing Property and has complied with the terms of the existing permit.
2. The Developer has presented the City with a proposal to construct a two phase, 48,600 square foot expansion to Developer's existing building for the manufacturing and warehousing of food products in flexible packaging on the Additional Property, which requires the Developer to amend its existing CUP to allow for the expansion.
3. The Foley Planning Commission has reviewed and recommended approval of the CUP amendment.
4. After proper mailed and published notice, the Foley City Council has conducted a public hearing on the CUP amendment.
5. The Council finds that:
 - a. The amended CUP is an expansion of an existing facility that does not burden public facilities and a new wastewater permit will be issued to ensure the expansion does not burden public facilities.
 - b. The existing facility is consistent with the comprehensive plan compatible with existing and planned uses in the industrial park, does not adversely affect adjacent properties, and the expansion will not change this consistency or compatibility.
 - c. The expansion of the existing facility is part of the City's plan to encourage expansion of existing businesses and grow tax base within the City.

- d. With the granting of variances below, granting the amended CUP will not create a traffic hazard and adequate parking and loading will be provided.
- e. The existing facility has not created any health, safety or welfare concerns and the expansion is not anticipated create detrimental effects for the City.

Parking Standard Variance

1. The property where the facility expansion will be located is burdened by a significant underground pipeline easement.
2. The Developer has requested a variance from the requirement to pave parking in the vicinity of the pipeline due to regular utility work that would destroy the pavement, and instead use crushed granite.
3. The Foley Planning Commission has reviewed and recommended approval of the parking standard variance.
4. After proper mailed and published notice, the Foley City Council (sitting as the Board of Adjustment) has conducted a public hearing on the parking standard variance.
5. The Council finds that:
 - a. The existence of the underground pipeline and regular excavation present a unique condition that pre-dated the Developer's ownership of the Existing and Additional Properties; Developer would be responsible for repairing any pavement damage caused by utility work.
 - b. Allowing crushed granite instead of pavement is necessary to preserve reasonable use of the this portion of the property because repeated paving cost would render the portion of property commercially unusable and restrict any expansion of the use of the Existing Property.
 - c. Although there are economic reasons associated with this variance, the primary consideration is to allow the maximum use and development of the Existing and Additional Properties.
 - d. The use of crushed granite instead of pavement maintains the character of the neighborhood because adjacent properties are zoned industrial and are permitted to use crushed granite.
 - e. The variance meets the spirit of the ordinance and comprehensive plan since the area is located in the industrial park where crushed granite is permitted on industrially zoned properties.

Setback Variance

1. Due to the configuration of the excess right of way for Highway 23, the Additional Property has an angled lot line that awkwardly aligns with road right of way and the facility expansion is proposed to infringe seven (7) feet into the rear yard setback, which requires a variance.
2. If Developer acquires the excess right of way that the City is working to acquire from the County, the variance will not be necessary.
3. The Foley Planning Commission has reviewed and recommended approval of the parking standard variance.
4. After proper mailed and published notice, the Foley City Council (sitting as the Board of Adjustment) has conducted a public hearing on the rear yard setback variance.
5. The Council finds that:
 - a. The odd shaped lot line resulting from a recent MnDOT highway project creates a unique circumstance.
 - b. Allowing a modest variance from the rear yard setback is necessary to preserve reasonable use of the property by allowing the expansion project to move forward with the expectation that the conveyance of the excess right of way will ultimately eliminate the need for the variance.
 - c. No neighboring property is impacted by the reduced rear yard setback, and adequate distance from Highway 23 remains in place to protect the safety of the travelling public and any aesthetic concerns.

Driveway Width Variance

1. The Developer originally proposed multiple driveways for the loading facility expansion in order to more closely comply with driveway width standards. However, City staff were concerned about traffic conflicts and site impacts resulting from multiple driveways, and instead suggested a single, wide driveway.
2. Consistent with staff recommendations, Developer has requested a variance for a 100 foot wide driveway instead of the 30 foot maximum provided in the ordinance.
3. The Foley Planning Commission has reviewed and recommended approval of the driveway width variance.
4. After proper mailed and published notice, the Foley City Council (sitting as the Board of Adjustment) has conducted a public hearing on the driveway width variance.
5. The Council finds that:

- a. Avoiding multiple driveways, as permitted under the ordinance without a variance, is a unique condition not caused by Developer's conduct.
- b. A single, wider driveway is necessary to preserve reasonable use of the property while minimizing traffic and safety concerns.
- c. Driveways wider than 30 feet exist through the industrial park, so the proposed driveway will not alter the character of the area.

Site Plan

1. The Developer has submitted a site plan and certificate of survey consistent with the variances listed above as well as completion of the road vacation.
2. The Foley Planning Commission has reviewed and recommended approval of the site plan and certificate of survey.
3. The Council finds that the site plan and certificate of survey, upon granting the variances listed above and completion of the road vacation, are consistent with the City's zoning ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE FOLEY CITY COUNCIL THAT, in accordance with the City of Foley Zoning Ordinance and pursuant to the requirements of Minnesota Statutes:

1. The above Findings of Fact are adopted.
2. The Development Agreement, Amended Interim Industrial Wastewater Discharge Permit, CUP Amendment, and Variances are hereby approved.
3. The Site Plan and certificate of survey are hereby conditionally approved on the condition that the site plan for Phase II is conditioned the vacation of 4th Avenue West from Glen Street to Minnesota State Highway 23 is completed prior to the initiation of construction of Phase II.
4. The Mayor and City Administrator are hereby authorized and directed to execute any documents appropriate and necessary to carry out the approvals granted by this resolution.

Adopted this ____ day of _____, 2016.

CITY OF FOLEY

Dave Mosford, Mayor

