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MEMORANDUM

TO: PLANNING COMMISSION

FROM: KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
KYRA CHAPMAN - PLANNER

SUBJECT: CONTINUATION OF REQUEST FOR INTERIM USE PERMIT #I2-2025 TO ALLOW A RAIL CAR REPAIR BUSINESS IN THE I-1 LIGHT INDUSTRIAL DISTRICT AT 100 2ND AVE. SW, AS PROPOSED BY NEW PRAGUE MILL, LLC.

DATE: MARCH 10, 2025

Background

At the February 26th Planning Commission meeting, following the staff presentation, holding the required public hearing and substantial discussion, a motion was passed to table the request for #I2-2025, requesting to allow Cypress Rail Solutions, a rail car repair business, in the I1-Light Industrial District at 100 2nd Ave SW as proposed by New Prague Mill, LLC. At the meeting, staff recommended denial of the request, therefore, staff did not create a list of conditions for approval. As such, the Planning Commission requested staff draft a list of conditions for potentially approving the request based on questions and discussion that occurred during the meeting. These conditions were largely related to the prohibiting of painting, limiting hours of operation, vegetative/screening plans, and requiring a dumpster on site for materials cleaned out of rail cars before they can be repaired. The end of this report includes a list of suggested conditions based on the Planning Commission's feedback along with suggestions from staff should the conditions be used for a conditional approval.

The original report is attached to this memo in full for reference purposes.

Existing Locations

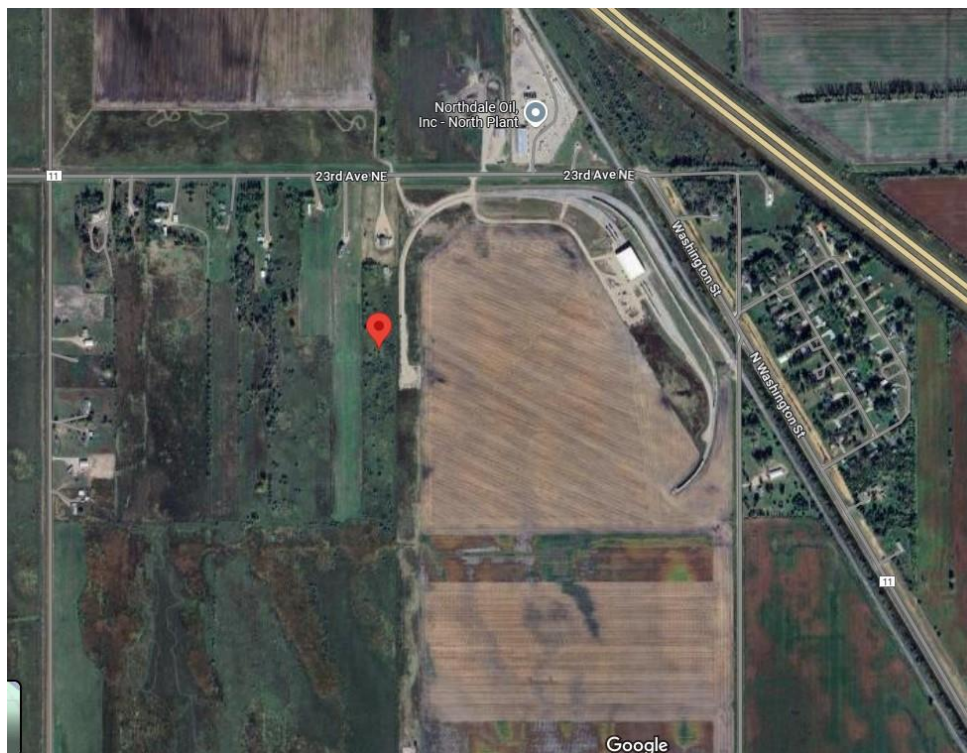
At the Planning Commission meeting, Cypress Rail Solutions stated that they currently operate their business in Grand Forks, ND and Erskine, MN. Staff reached out to Polk County (Erskine) and the City of Grand Forks (Rye/Falconer Township) to determine if there have been any complaints or concerns with the existing rail car repair business. These communities have heard few to no complaints. Both Rye and Falconer Township agreed there have been minimal complaints from their residents. They run a clean facility with no garbage debris, no objectionable fumes, and dust or smoke. Falconer Township did receive a complaint about noise caused by switch engines moving cars in the middle of the night as well as horn blowing at crossings and cars banging into each other. Since that complaint, they have rescheduled their car movements and it is quieter in the evenings.

It should also be noted that both the locations are in townships (outside city limits) and in rural industrial/rural residential locations. The existing properties are located at:

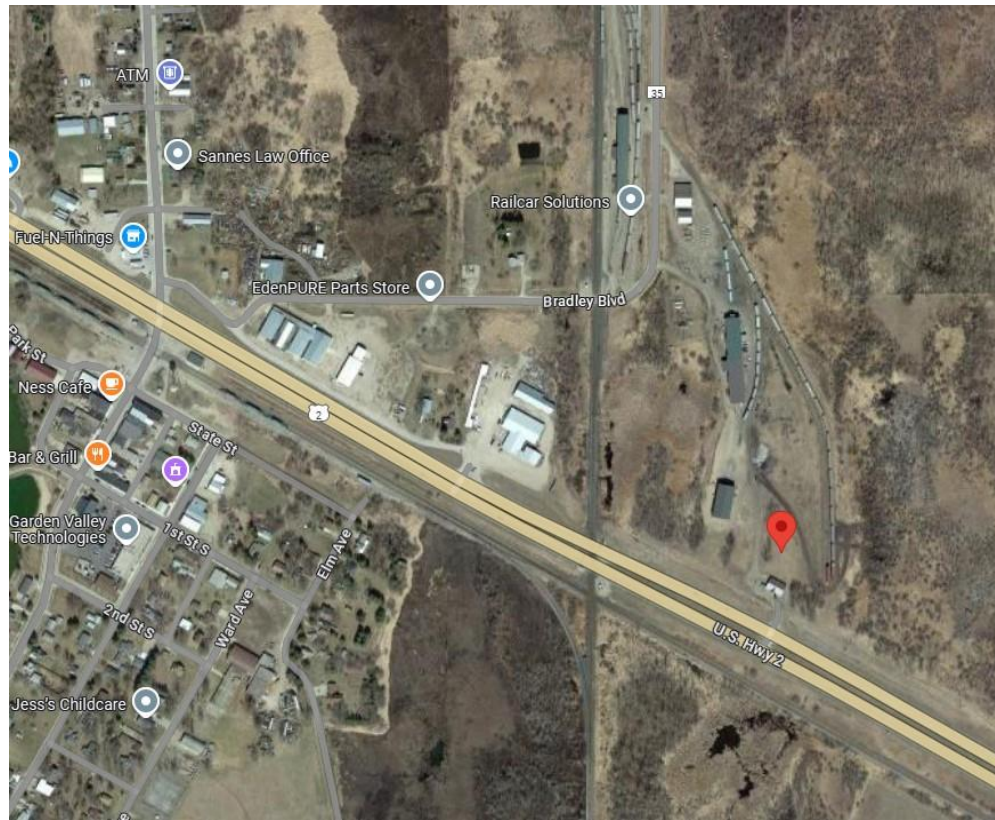
- 22210 US Hwy 2 SE, Erskine, MN 56535
- 1335 23rd Ave NE, Grand Forks, ND 58203

Unlike the other two properties, the proposed New Prague site would be located within city limits. Also unlike the locations near Erskine and near Grand Forks, the proposed site here in New Prague would be in the heart of the city in an old flouring mill in a significantly denser location near several businesses, and residential properties with far more possibilities of disruption from the proposed business.

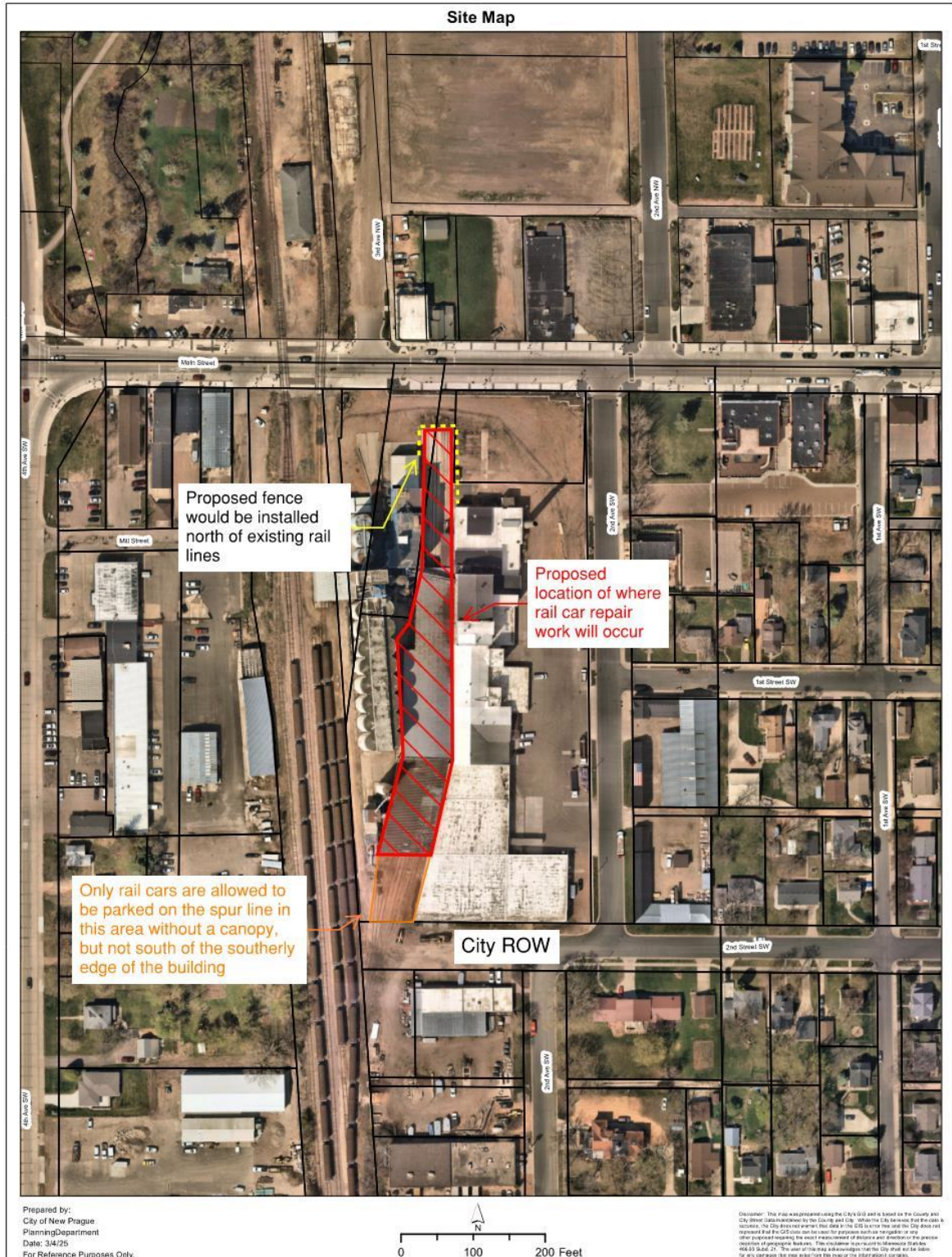
Staff reached out to MnDOT regarding the current frequency of Union Pacific Railroad in New Prague. New Prague, north of Le Sueur-Scott County line, receives 4 trains per day, and south of the line receives 2 per day.



Cypress Rail Solutions – Located North of Grand Forks, ND



Cypress Rail Solutions – Located East of Erskine, MN



Proposed Location of Rail Care Storage and Repair in New Prague

General Planning Staff Comments

Although staff do not want the mill to be underutilized or empty, the proposed use does not match the Future Land Use Map in the Comprehensive Plan. The 2045 Comprehensive Plan was recently adopted in October 2024, guiding the subject property away from I-1 Light Industrial to “Downtown Flex”. The standards for “Downtown Flex” have not been established yet but would likely allow commercial uses commonly seen along Main St. Several of the existing tenants inside the building are similar to uses currently allowed in our B-1 Central Business and B-2 Community Commercial District such as office uses, religious institutions, and retail/service establishments. Based on the existing tenants, the uses have shifted the site towards commercial uses rather than industrial. Even though the applicants are requesting the interim use permit to allow the rail car repair for 10 years, that is a substantial amount of time for an interim use permit. Most interim use requests are usually 1-5 years long.

Staff have concerns about possible nuisance complaints regarding noise. No industrial uses have occurred on the property since 2019 when Miller Milling closed the facility. For the past 5 to 6 years, the residents have likely become accustomed to the lack of noise, smells or even rail car traffic into the site. If the interim use is approved, loud noises will emit from the property (as noted by their own submitted sound decibel readings) especially since the rail car repair will occur in an exterior area. The noise may also be a nuisance for the tenants and businesses operating within the Mill building. The City may receive multiple complaints from neighbors depending on the loudness and frequency of noise resulting in more staff time review of enforcement and compliance. In fact, during the public hearing, nearby resident Joe Nadeau (from 212 2nd St W) expressed these concerns about noise and specifically asked about what tools and methods would be used for repairs on the site. Furthermore, the noise could conflict with future POPS concerts, which is directly north of the property.

As noted in the applicants submitted sound testing, which staff did witness of the “ramp drop” test as measured at 74 dBA at the sidewalk, there was certainly sounds from vehicle traffic that approached the sounds measured from the proposed exterior site for repair. Chapter 7030 for MPCA Noise Pollution control notes that sound must be measured based on the land use activity at the location of the receiver. Generally, sound limits are lowest for residential receivers and higher for industrial. The downtown area (where the measurements were taken at the sidewalk) would be considered “Noise Area Classification 2” which limits daytime decibels to 65 for 50% of an hour or 70 for 10% of the hour. Depending on the amount of time the “ramp drop” or “hammer on metal” or other activities would occur within an hour, the MPCA threshold could be exceeded. While sound readings were not taken at adjacent residential properties, the threshold drops to 60 and 65 decibels respectively. This reading would apply to residential apartments above a commercial area and it’s notable that there are apartments directly north of Main Street where the sound readings were taken.

Absent any possible violations for Chapter 7030 for MPCA Noise Pollution, Section 92.15 of the City Code states that the following is a public nuisance: “Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public”. This code can be utilized for noises not exceeding the MPCA thresholds.

The applicant makes the statement that “if this usage is denied, the city has effectively condemned by property.” In determining of a zoning regulation violates a property owner’s rights, the US Supreme Court has recognized two classes of regulatory takings: Categorical (regulation denies ALL

economically beneficial or productive use of land) and Case-Specific (involving the economic impact of the regulation). City staff argues that this is not a categorical taking as there are many viable businesses already operating on the property, that can and will continue to operate at the property not related to the specific request at hand.

Interim Use Permit Criteria

The City Council may consider an interim use permit for a use which is not specifically listed in this Ordinance as an interim use within the affected district and may grant a permit provided such interim use, after review by the Planning Commission and the City Council, is found to otherwise meet the criteria for granting an interim use permit within the affected district. The City Council shall make the following findings in order to approve an interim use (staff's recommended findings are included below which were written to support the denial of the IUP):

- A. The proposed interim use will utilize property where it is not reasonable to utilize it in a manner provided for the City's Comprehensive Plan and Zoning Ordinance. (The proposed interim use for rail car repair will not utilize property in a reasonable and temporary manner considering the property is currently zoned I-1 Light Industrial Zoning, but is guided as "downtown flex" according to the 2045 Comprehensive Plan and of which exact requirements have not yet been determined.)
- B. The proposed interim use is presently acceptable but, given anticipated development, will not be acceptable in the future. (The proposed rail car repair is not acceptable in that while the property is currently zoned I1-Light Industrial and uses such as automobile repair are listed as permitted, this specific use is proposed to happen in an "exterior" fashion and not within a building. It is additionally noted that the property will be rezoned to "downtown flex" in 2025 or early 2026 to fit the current comprehensive plan and noting that the use is requested to continue 5 years from the date of approval.)
- C. The proposed use will not hinder permanent development of the site. (The proposed designated rail car repair area will hinder permanent development of the site because even though it is utilizing an underutilized canopy covered rail spur, the property is guided as "downtown flex" in the Comprehensive Plan which will lead to continued redevelopment of the site in a non-industrial fashion. The industrial use even as an interim use for a limited time period could deter continued development of the site for commercial purposes, could disturb existing uses on the property itself and could hinder development of adjacent properties.)
- D. The proposed use will not adversely impact implementation of the Comprehensive Plan for the area. (The proposed designated rail car repair area will adversely impact implementation of the Comprehensive Plan as the site is guided as "downtown flex" in the Comprehensive Plan and not guided for industrial uses which is at odds with allowing this industrial use even in an interim fashion.)
- E. The proposed use will not be injurious to the surrounding neighborhoods or otherwise harm the public health, safety and welfare. (The proposed rail car repair may be injurious to the surrounding neighborhoods or otherwise harm the public health, safety and welfare as it may result in noise nuisances relating to Section 92.15 of the City Code or Chapter 7030 of MPCA Noise Pollution regulations.)

- F. The use will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area. (The rail car repair business may result in noises that may conflict with the planned Praha Outdoor Performance Stage, directly north of the Mill and Main Street and potentially other parks, schools, street and other public facilities.)
- G. Adequate utilities, access roads, drainage and necessary facilities have been or will be provided. (Adequate utilities, access roads, drainage and necessary facilities exist for the proposed rail car repair business.)
- H. The date or event that will terminate the use has been identified with certainty. (N/A as staff is not recommending approval.)
- I. Permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future. (The proposed designated rail car repair area will not impose additional costs on the public if it is necessary for the public to take the property in the future.)

In permitting a new interim use, the City Council may impose, in addition to the standards and requirements expressly specified by this Ordinance, additional conditions which the City Council considers necessary to protect the best interest of the surrounding area or the community as a whole. Any City Council approval of an interim use shall be subject to the following conditions:

- A. Except as otherwise authorized by this section, an interim use shall conform to this Ordinance as if it were established as a conditional use.
- B. The date or event that will terminate the interim use shall be identified with certainty. The City Council may require the applicant to deposit a cash amount with the City, or provide some other form of security, to ensure compliance.
- C. In the event of a public taking of property after the interim use is established, the property owner shall not be entitled to compensation for any increase in value attributable to the interim use.
- D. Other conditions as the City Council deems reasonable and necessary to protect the public interest and to ensure compliance with the standards of this Ordinance and policies of the Comprehensive Land Use Plan.

As City staff is not recommending approval of the request, staff did not draft conditions for approval in the original report.

Staff was directed by the Planning Commission at the meeting on February 26th to draft a list of possible conditions for approval based on discussion that occurred during the meeting related to painting, hours of operation, dumpster, fencing materials, maintenance of the fence, completion of the northern area of the site, vegetation/landscaping and limiting the use to a five year time frame. Staff's draft of conditions as requested by the Planning Commission is listed below:

1. This Interim Use Permit does not affect any other existing Interim Use Permits or Conditional Use Permits on the property.
2. The proposed rail car repair use shall cease operations within 5 years from the date of approval of this Interim Use Permit which is April 7th, 2030.
3. Approval is granted in general accordance with the site plan dated 3/4/2025 on file with the New Prague Community Development Department which notes the extent of the operation and the location of required fencing/screening/vegetation.
4. Approval is granted in general accordance with the “New Prague Mill Perspective” drawing dated 2/14/25 on file with the New Prague Community Development Department which notes that the paved parking lot, fence/sound wall, monument sign, landscaping and building paint is corrected and maintained throughout the term of the Interim Use Permit.
5. The required “fence” that extends north of the building and around the private rail lines near Main Street must be at least 20’ tall and meet or exceed MnDOT Standard Plan 5-297.661 for “Wood Planking Noise Wall with Concrete Posts” which provides for 100% opacity.
6. Vegetation must be placed around the fence/noise wall as outlined in Condition #4 must meet the requirements of Zoning Ordinance Section 707, Subd. 2 for screening of industrial uses abutting commercial properties. This requires a single row of trees at a minimum 8’ height at 40’ spacing at minimum.
7. Any noise from the proposed rail car repair use cannot exceed the requirements of MPCA Noise Pollution Control Rule 7030 or City Code Section 92.15 regarding public nuisances.
8. To mitigate noise concerns for nearby properties, hours of operation (except for office hours) are only permitted Monday Through Friday, 7am to 4:30pm with no exceptions.
9. The painting of rail cars is prohibited on the site.
10. Employees of the rail car repair site must utilize existing office space (including bathrooms) within existing buildings on the property. Temporary work offices and temporary bathrooms are not permitted.
11. At least 36 paved off-street parking spaces, including required ADA spaces, must be striped with white or yellow paint lines no less than 4” wide providing for parking spaces at a size of 9’ x 20’ on a paved surface, as required by Section 717 of the New Prague Zoning Ordinance to be utilized for the exclusive use of the applicant. If the overall parking area exceeds 50 spaces it must also have interior landscape islands as required by the ordinance.
12. Any parking space must be setback 5’ from any property line to provide a buffer between the sidewalk and the parked vehicles and allow for required perimeter landscape trees.
13. All signs must conform to Section 718 of the Zoning Ordinance which require a permit under a separate permit process.

14. All lighting must conform to Section 704 of the Zoning Ordinance.
15. All dumpsters, garbage containers or refuse bins provided on the site outside of a building shall be screened from view in accordance with Section 703 of the Zoning Ordinance. Additionally, any dumpster that holds residual agricultural products from rail cards must be leak proof and have a cover to prevent odors and must be picked up at least weekly by a refuse company but may be required to be picked up more often if odors persist from the site.
16. A 6' access aisle must be maintained through the exterior work area to ensure access to all doors that abut the area for fire access.
17. If the exterior storage area is ever completely fenced, the applicant must provide a knox box to hold a key for access by the Police/Fire Department.
18. Except as otherwise authorized by the Zoning Ordinance, this interim use shall conform to this Ordinance as if it were established as a conditional use.
19. In the event of a public taking of property after the interim use is established, the property owner shall not be entitled to compensation for any increase in value attributable to the interim use.
20. The applicant shall reimburse the city for all fees and costs it incurs for processing, reviewing, and acting on the application approved herein, including but necessarily limited to any fees charged by the city's professional consultants in accordance with established rates.
21. The property shall be subject to all requirements of the New Prague City Code and shall otherwise comply with all other applicable federal, state, and local laws, rules, and regulations.

If the Planning Commission were to recommend approval, in addition to conditions, new findings would need to be drafted to approve the interim use permit. At this time, staff have not provided findings in the affirmative to approve the interim use permit.

Staff Recommendation

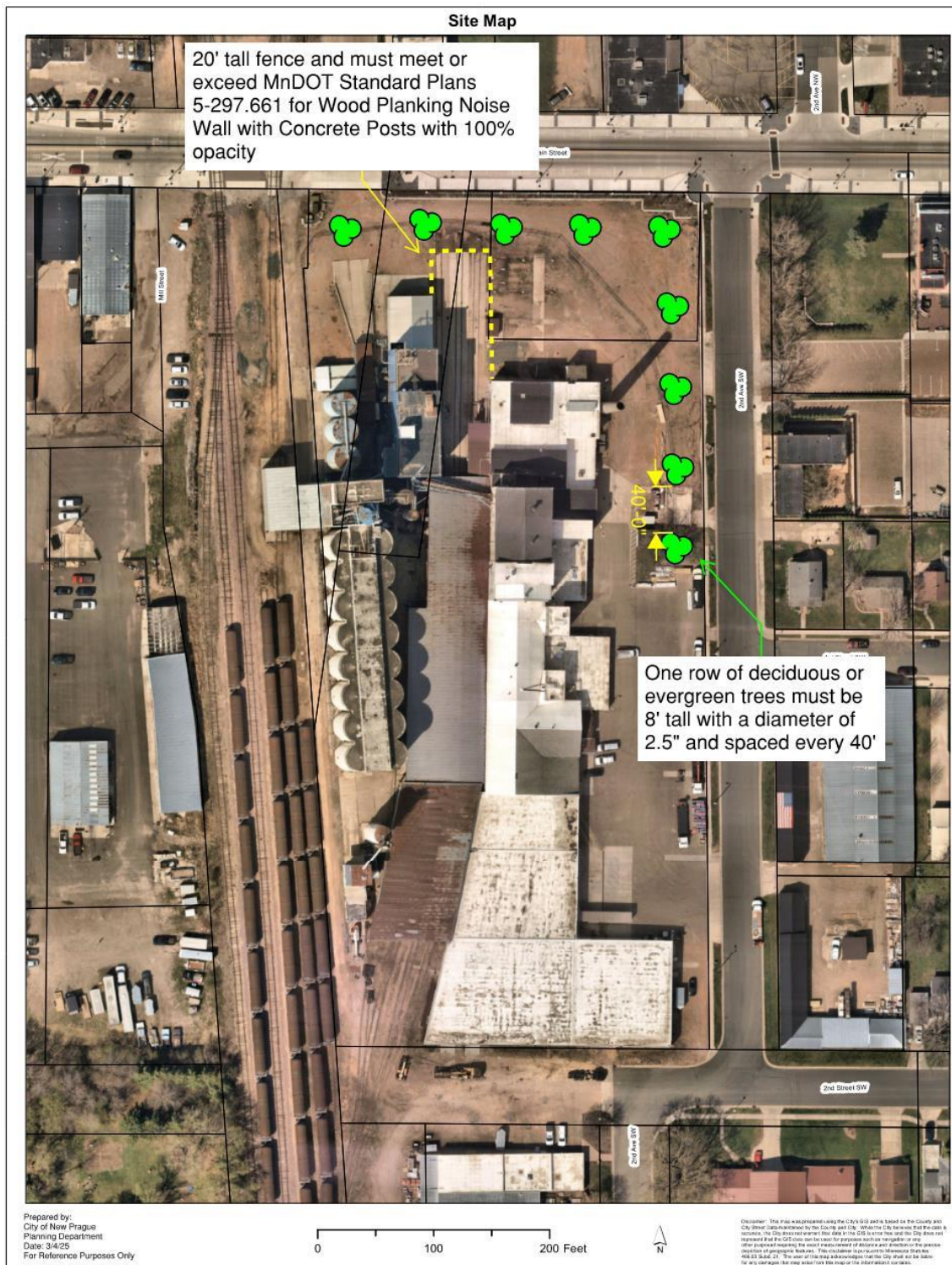
Staff continues to recommend **denial** of the request for Interim Use Permit (#I2-2025) to allow a rail car repair business in the I-1 Light Industrial Zoning District, at the former mill located 100 2nd Ave. SW, as proposed by New Prague Mill, LLC with the following findings:

- A. The proposed interim use for rail car repair will not utilize property in a reasonable and temporary manner considering the property is currently zoned I-1 Light Industrial Zoning, but is guided as "downtown flex" according to the 2045 Comprehensive Plan and of which exact requirements have not yet been determined.
- B. The proposed rail car repair is not acceptable in that while the property is currently zoned I1-Light Industrial and uses such as automobile repair are listed as permitted, this specific use is proposed to happen in an "exterior" fashion and not within a building. It is additionally noted that the property will be rezoned to "downtown flex" in 2025 or early 2026 to fit the current comprehensive plan and noting that the use is requested to continue 5 years from the date of approval.

- C. The proposed designated rail car repair area will hinder permanent development of the site because even though it is utilizing an underutilized canopy covered rail spur, the property is guided as “downtown flex” in the Comprehensive Plan which will lead to continued redevelopment of the site in a non-industrial fashion. The industrial use even as an interim use for a limited time period could deter continued development of the site for commercial purposes, could disturb existing uses on the property itself and could hinder development of adjacent properties.
- D. The proposed designated rail car repair area will adversely impact implementation of the Comprehensive Plan as the site is guided as “downtown flex” in the Comprehensive Plan and not guided for industrial uses which is at odds with allowing this industrial use even in an interim fashion.
- E. The proposed rail car repair may be injurious to the surrounding neighborhoods or otherwise harm the public health, safety and welfare as it may result in noise nuisances relating to Section 92.15 of the City Code or Chapter 7030 of MPCA Noise Pollution regulations.
- F. The rail car repair business may result in noises that may conflict with the planned Praha Outdoor Performance Stage, directly north of the Mill and Main Street and potentially other parks, schools, street and other public facilities.
- G. Adequate utilities, access roads, drainage and necessary facilities exist for the proposed rail car repair business.
- H. The proposed designated rail car repair area will not impose additional costs on the public if it is necessary for the public to take the property in the future.

Attachments

- 1. Screening/Vegetative Markup– Dated 3/4/25
- 2. Concept Plan of the Mill – Dated 2/14/2025
- 3. MnDOT Noise Wall Example – Undated



Screening/Vegetative Markup



Concept Plan of the Mill (Looking Southwest from Main St)



Example of MnDOT Noise Wall Appearance (posts can be inside or outside)