

**AGENDA
MANDAN PLANNING & ZONING COMMISSION
COMMISSION ROOM 5:15 P.M.
FEBRUARY 22, 2016**

Roll Call, Reading and Approval of the November 30, 2015 minutes.

NEW BUSINESS

- 1. Preliminary concept plan of Force Contracting (Old Red Trail east of Roughrider Circle).**
- 2. Request by Ben Schaaf for a front setback variance on Lot 14, Block 3, Denison's Industrial Park Replat of Block 2.**

OTHER BUSINESS

- 1. Discussion on revised Municode Sections 105-1-6 through 105-1-13.**
- 2. Appointment to open commissioner seat.**

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL BUILDING
November 30, 2015

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall Building on November 30, 2015, at 5:15 p.m. CDT.

Commissioners Present: Zachmeier, Fleischer, Kelly, Klein, Knoll, Van Beek, Leingang, Laber, Liepitz, Beach, Robinson

Commissioners Absent: Mehlhoff

Commissioner Liepitz motions to approve the October 26, 2015 minutes. Commissioner Knoll seconds. Upon vote, the motion receives unanimous approval of the Board.

NEW BUSINESS

- 1. A request from Mandan Parks & Recreation District for final plat approval of Old Red Trail Commercial Subdivision (Sports Complex). Said addition is a portion of the south ½ of Section 22, together with Lot 2 of the southwest ¼, Section 22, Township 139N, Range 81W.**

Bob Decker, City Planner, describes the area. There is a high pressure gas line on the west side of the property. The intent is to have the complex done by summer of 2017. Some utility easements will be abandoned and some added. The traffic needs to be studied at the Collins intersection and 16th Street will be extended north and connected to Old Red Trail.

Commissioner Laber asks Commissioner Knoll if the Park Board is good with the layout. Commissioner Knoll says they have looked at this numerous ways and yes, they are good with the layout. There are some details to figure out yet. The closing date has been pushed back.

The front entrance may face the interstate.

Commissioner Laber talked to Parks Director, Cole Higlin, who says there are other conditions to be met to complete the sale of the property. This plat isn't the only condition.

Commissioner Leingang motions to approve the final plat. Commissioner Laber Seconds. Upon vote, the motion passes unanimously.

OTHER BUSINESS

- 1. Letter of intent for a possible zone change on Lots 4-13, Block 2, Lakewood 8th Addition.**

Bob Decker, City Planner, describes the request. The owner and developer are looking for input from the commissioners before a formal application is submitted. The request is to change the zoning to RM (Multi-Family Residential) for an assisted living center. Some of the currently platted twin home lots may be absorbed for the living center. Bob suggests a PUD option. The candidates for residency would not have vehicles so the parking requirement may not be needed.

Dave Patience, Swenson & Hagen, “The fire station sits right here on 40th. If you come south, there’s a new office building right at this location. Turn in...if you were to go all the way across there you’d end up eventually at the golf course over here. Midwest Care is looking at buying ten lots right between these two streets here and that location would be these ten. In your agenda package there was a layout of some smaller buildings in there. I have to tell you that these are assisted living. There’s sixteen units in one building and it’s all on one floor. The building is substantially bigger than that sketch that you had as Bob was telling you. In a nursing home or assisted living center you only need one parking spot for every two units. So, consequently, it’s about half ...no about a fourth of what you would actually require if this was an apartment complex. These sixteen units buildings they actually need only eight parking spots for each building. That’s understandable when you have people who are in assisted living. There’s a reason it’s called assisted living. The biggest one is they’re not driving. So, these are proposed as a one story building, low profile, easily fit into a neighborhood. This is a pending agreement between Midwest Care and Mitzel Development, so we would be coming in December for a consideration and hopefully to have you call for a public hearing in January. At this time, the only thing that the developers are looking for is if you have any concerns as the planning commission about putting this, basically RM District adjoining an existing RM District that I think you zoned sometime this summer for the Lakewood 8th Addition. I’m here to answer any of your questions.”

Commissioner Leingang asks if the R7 lots to the west are still open. Bob says this is undeveloped. The water and sewer are going in now and they have not started the streets yet. Lakewood 9th to the north is under development now. That is where the Good Samaritan Nursing Facility is going in. There is the opportunity these two facilities could share.

Commissioner Leingang asks if there will be enough parking when families come to visit on the holidays, for example. Bob says there will have to be a provision for guest and staff parking. There could be a sheltered, circular drop off/pick up at the entrance.

Commissioner Laber says she brought up the PUD suggestion. With a PUD it could be adjusted for spacing, setbacks, and footprint. There is a housing study with Bismarck where the two cities are focusing on filling shortages in the types of housing needed. This use is one of the shortages in the community. She would like to see this move forward. The assisted living is not a nursing home. The residents walk and participate in the neighborhood. The R7 is not an issue. She is not excited about RM because if the project falls through then what could go in there?

Dave Patience, Swenson Hagen, says most communities try to limit the use of PUD. It becomes cumbersome for the building officials to check later on conformity. They have to keep going back to the minutes and restrictions on the use. He suggests a restriction on the RM zoning. Commissioner Laber says with a RM restriction you would still have to go back and check on the restrictions. Either way there would be follow up in the restrictions. There has to be a better way to electronically track these things. The city is implementing a GIS system where all these things could be easily tracked. Bob says so far there has been three PUDs done and they go into an ordinance structure so they are easily tracked.

Commissioner Liepitz is uncomfortable with the aggressive change from RM to R7 next door. A transition from R7 to R3.2 would be ideal.

Commissioner Laber feels the assisted living residents would want to be in a residential neighborhood versus a commercial or multi-family neighborhood. That seems to be how a lot of communities do it.

Commissioner Knoll asks if 24th would be the in and out access. Bob says this street loops around to 21st in Lakewood 9th Addition. There would be two accesses in and out.

President Robinson tells Dave Patience the application cannot come in as a clean RM. Dave thinks he can work with Bob on a PUD.

2. Potential variance request by Ben Schaaf. He wants commissioner's opinions before he comes in with a formal application request.

Ben Schaaf, 1017 17th St. NE, asked to come before the commissioners tonight to see how likely it is that they would grant him a front yard setback variance. His property is zoned MC (Light Non-Nuisance Industrial/Heavy Commercial) which has a 35' front yard setback. He wants to add on to the office area in front of the building. He is limited with the 35' setback.

Ben Schaaf, "I own the building on 17th St. NE. I got some people that rent it from me and they approached me about putting an addition on. Their outgrowing their office space. I talked to Bob and he said no, that don't work on a 35' setback and here I am. I want to put up a 25' x 50' building addition on the north end of the building. To me it's just wasted, taxable space that I could put to use. Better than weeds and trash blowing. They either got to find another place or do something."

President Robinson asks Ben if he wants to take it all the way to the boulevard. Ben says no. He has 35' from the end of his building to the property line and there is another 20' to the curb. He is asking for 25' of his 35'.

The building would be one story and match the existing.

Bob says this is an industrial area. There is not a lot of traffic. The majority of the buildings are set back 35' or even farther. This zoning district has one of the deeper front yard setbacks then you would see in other commercial or industrial districts.

Commissioner Laber asks if there are any utility easements within the space he wants to use. Bob thinks it would probably be a standard 10' easement in the front. That would be confirmed with utility companies.

Commissioner Laber wants to make sure the street would not have to be widened at some point in the future. Bob says the street is wide enough now to where parking is allowed on both sides.

The commissioners advise Ben to think about stipulations of asking for a variance if he does decide to apply for one. He would have to explain a hardship and why other options would not work.

3. Review and discussion on revised Municode Sections 105-1-6 through 105-1-13.

Bob gives an overview of some of the items he revised.

Off-street parking and loading – Bob tailored it to be able to adjust the parking requirements based on the project and nature of the use. For commercial, he changed *the number of employees to number of employees per shift*. Commissioner Fleischer counted parking spaces on school properties. The schools are short on parking all around. There are 12 spaces at Lewis and Clark where there should be about 90. For school staff it is 1 space for every 2 staff members. It should probably be 1 space for every 1 staff member.

Sidewalks – the developer should be responsible to put them in. Right now they are put in one lot at a time. Often they are not put in until a buyer purchases the home. Bob would like that to be included in a development agreement so there is a plan to have the whole subdivision has sidewalks in a reasonable time period.

Board of Adjustment – this names the City Commission as Board of Adjustment and the Planning & Zoning Commission will act in an advisory capacity. The Century Code says the Board of Adjustment must have 5 members.

Unlisted uses – Planning & Zoning will allocate uses not currently listed. Recommendation will come from the City Planner.

This Municode review of these sections will come back as a formal public hearing at the next meeting where Planning & Zoning will make a recommendation to the City Commission.

There is more discussion about parking. President Robinson asks if any changes were made to the verbiage on parking after speaking with the school district. Commissioner Fleischer says the major change was going from 1 parking space per 2 staff changed to 1 parking space per 1 staff member. He has heard through the years from the school district that they are short parking all over. Bob would like to see developer agreements asking for more parking right away rather than less, so the developer can come back with adequate parking. Parking could be added in stages. Commissioner Laber doesn't think stages are necessary.

Commissioner Laber comments on #1, Dwellings, Part B. Multi-family structures with common underground or ground floor parking garages. Bob added *and separate storage areas for each dwelling unit*. She finds the wording confusing. Bob explains for multi-family with common parking areas, this says separate storage areas need to be provided for each unit. She wants Bob to take another look at how that is presented. It seems to be thrown in there.

Commissioner Laber comments on #4, Hospitals. She thinks 1 space per 1 employee per shift, not 2 employees per 1 space.

Commissioner Laber comments on Off-Street Loading subsection, #2. Multi-family having ten or more units shall provide 1 off-street loading berth. What is a berth? She asks Bob to put in *refer to F and G*, because then she found the answers to her questions.

Commissioner Laber has a question with 105-1-11, Board of Adjustment. Is the process circular where it is brought to City Commission who refers to Planning & Zoning then back to City Commission? Bob says usually it will go to Planning & Zoning first, but some items may go directly to City Commission.

Commissioner Laber comments on 105-1-08, Building Permit and Approval of Plans. The middle sentence is Moby Dickish. She thinks a bullet list would be nice because there is so much in there.

Commissioner Laber motions to cancel the December meeting. Next meeting will be January 25. Commissioner Van Beek seconds. Upon vote, the motion passes unanimously.

Commissioner Leingang motions to adjourn. Commissioner Liepitz seconds. Motion passes unanimously. Meeting adjourns at 6:22 p.m.

NEW BUSINESS ITEM # 1

NEW BUSINESS ITEM # 1

Mandan Planning and Zoning Commission Agenda Item
 For Meeting on February 22, 2016
 Mandan Engineering and Planning Office Report
Preliminary Plat for Old Red Trail at 56th Ave. NW
 Requested Action
Approve Concept Plan

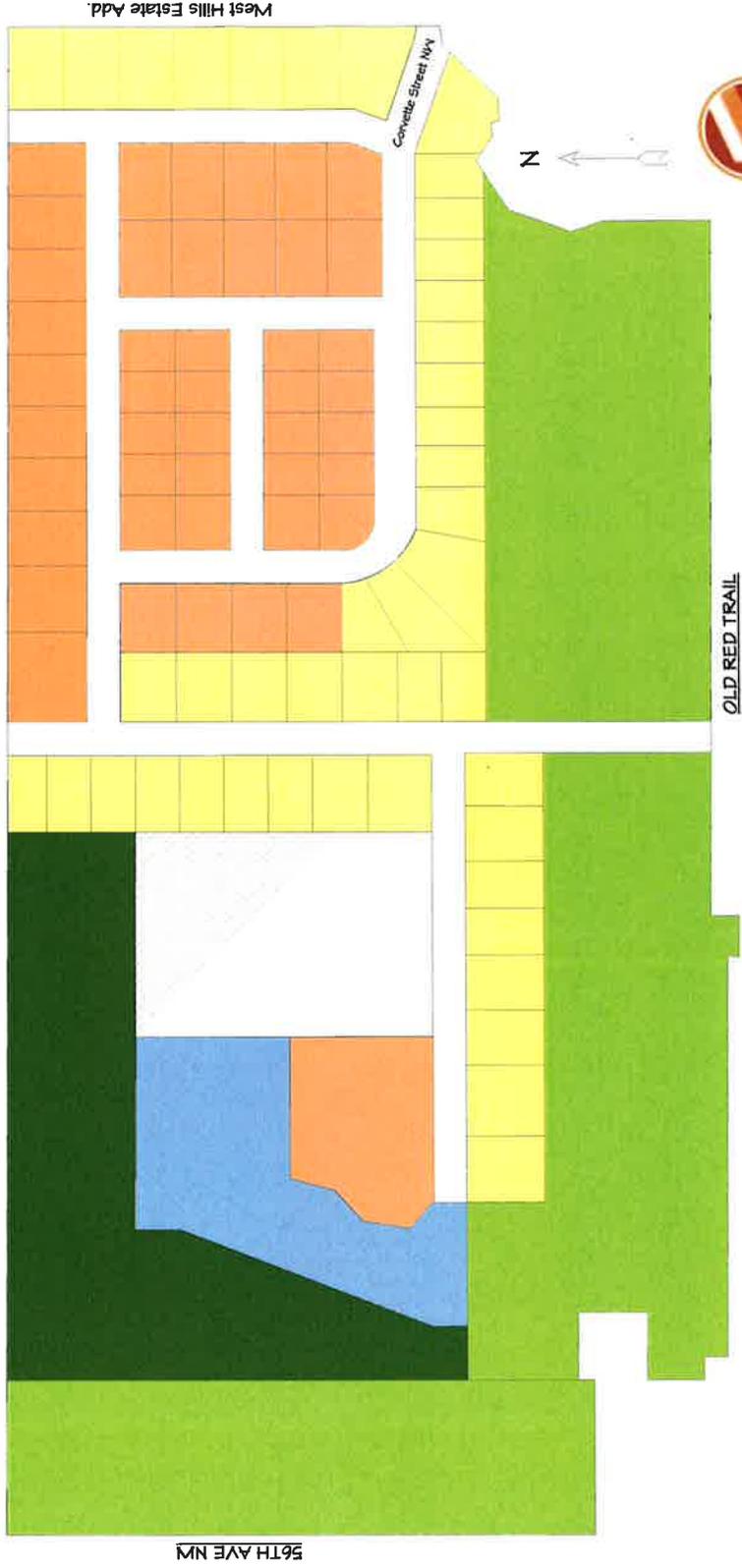
Application Details					
Applicant Force Panels	Owner Eldon Kroh	Subdivision none	Legal Description Tax parcels 41-0027000, 41-0028000 & 41-0028100		
Location On Old Red Trail east of 56 th Ave. NW		Proposed Land Use residential and commercial	Parcel Size 72 acres	Number of Lots multiple	
Existing Land Use vacant	Adjacent Land Uses Residential and agriculture		Current Zoning A	Proposed Zoning R7, R3.2, RM & CB	Adjacent Zoning A & R7
Fees \$300	Date Paid 2/2/2016	Adjacent Property Notification Sent		Legal Notices Published	

Project Description
<p>The proposal is to develop this area with a mix of residential and commercial. Project will be phased moving from east to west with residential being the first to go in.</p> <p>Area will need to be rezoned. Can be done as individual zones or a PUD.</p> <p>The Land Use and Transportation Plan projects this area to be developed with a mix of commercial and low density residential.</p>
Agency & Other Department Comments
Engineering & Planning Staff Comments
Engineering & Planning Recommendation
Proposed Motion

4540 30th Ave Nw
 Mandan, ND 58554
(701) 663-4012



- TWIN HOMES - 563,336 SQFT +/- 12.95 Acres +/-
- MULTI-FAMILY - 342,955 SQFT +/- 7.87 Acres +/-
- SINGLE FAMILY - 571,173 SQFT +/- 13.11 Acres +/-
- COMMERCIAL - 1,066,023 SQFT +/- 24.47 Acres +/-
- PARKS & REC. - 161,309 SQFT +/- 3.70 Acres +/-
- EXISTING RESIDENCE



FORCE
CONTRACTING

Midwest Drafting
& Design

West Hills Estate Add.

56TH AVE NW

OLD RED TRAIL

Convelle Street NW

N

Legend

ORT & 56th



NEW BUSINESS ITEM # 2

NEW BUSINESS ITEM # 2

Mandan Planning and Zoning Commission Agenda Item
 For Meeting on February 22, 2016
 Mandan Engineering and Planning Office Report
Denison's Industrial Park
 Requested Action
Front Setback Variance Request

Application Details					
Applicant Ben Schaaf	Owner Ben Schaaf	Subdivision Denison's Industrial Park		Legal Description Lots 14, Block 3	
Location 17 th St. NE		Proposed Land Use Industrial		Parcel Size 16,500 sf	Number of Lots 1
Existing Land Use Industrial	Adjacent Land Uses Industrial		Current Zoning MC	Proposed Zoning MC	Adjacent Zoning MC
Fees \$200	Date Paid 2/11/2016	Adjacent Property Notification Sent None required		Legal Notices Published None required	

Project Description
<p>This lot is located in an industrial subdivision that is adjacent to the commercial property that will be developed once construction of the sports complex is complete.</p> <p>The request is to reduce the front yard setback from 35' to 10' to allow construction of an expansion of the office area of the existing building.</p> <p>The majority of the building is used as a warehouse for a contracting business. The adjoining lot to the east is also owned by this applicant. The two lots are fully fenced as one property.</p> <p>There are 15 originally platted lots on the street but only eight owners and eight buildings, four on each side.</p> <p>This subdivision was platted in 1977 and the plat showed the 35' front yard building setback. The buildings on nearby lots appear to conform to the 35' setback.</p> <p>17th St. NE is a one block street about 830' long bounded on the west by 8th Ave. NE and bounded on the east by Mandan Avenue. The right-of-way is 80' wide and the street is 40' wide with curb and gutter. Parking is allowed along both sides of the street. There are street lights but no sidewalks. There is a fire hydrant across the street from this building. Electric lines are in an easement at the rear of the properties.</p> <p>The whole area of both lots is gravel and used for parking vehicles and storing materials.</p> <p>The width of the right-of-way combined with the 35' front yard setback places the existing building 55' from the curb.</p>
Agency & Other Department Comments
Engineering & Planning Staff Comments
<p>Sec. 105-1-12 authorizes the Board of Adjustment to grant variances if the request meets certain conditions.</p> <p><i>a. On appeal from an order, requirement, decision or determination made by an</i></p>

administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this chapter in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the chapter would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

- b. *No adjustment in the strict application of any provisions of this chapter shall be granted by the board of adjustment unless it finds that:*
1. *There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not;*
 2. *For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant;*
 3. *The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

This request does not meet most of the requirements for granting a variance. The question is whether or not the code requires a request to meet all or only one of the requirements. The code does not include either an “and” or an “or” between criteria.

1. *Exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition.* This lot is no different than any other lot in the subdivision as to shape. The area is basically flat so there are no physical or topographical issues.
2. *Special circumstances or conditions.* There are no special circumstances. All the buildings in this area are a similar type of construction and use.
3. *Deprive the applicant of the reasonable use of said land or building.* The applicant has reasonable use of the land and building. The building can be expanded within the established setbacks.
4. *Not be injurious to the neighborhood or otherwise detrimental to the public welfare.* Granting the variance would not be injurious to the neighborhood or detrimental to the public welfare.

The MC district is the MA district with the following differences:

1. No residential dwellings. There is no residential use allowed in MA so this is meaningless.
2. No animal hospital.
3. Lot area 7,000 instead of 5,000.
4. 35 foot front yard setback. MA has a 0 front yard setback.
5. If next to a residential lot, side yard is 35'. MA allows setback required for residential lot.
6. Rear yard is 10'. MA is 0.

The requirement for a 35' setback is well established. However, the type of development and the low volume

of traffic on the street would call into question if a 35' front yard setback is necessary or appropriate. This is one requirement that deviates significantly from the MA requirement.

The floor area ratio of 1 was not changed from MA. The 35' front yard setback and the 10' rear yard setback effectively reduce the FAR for this lot to a maximum of 0.73 even though the allowance is 1. The existing building has a FAR of 0.36. Including the proposed addition would increase the FAR to 0.44.

Expanding the building would not present a sight distance problem for the adjoining property's driveway since there would be 30' between the end of the proposed building addition and the curb.

Very few of the lots in this subdivision have any grass or trees. Most lots have paving or gravel over the majority of the lot. Most landscaped areas are in the boulevard which is part of the street right-of-way. The property to the west has 5 trees planted in the boulevard. The property to the east has 7 trees planted in the boulevard. The recent addition to the code of a 25% front setback, or 5% of lot area, landscaping requirement for industrial lots could still be met if this building addition were allowed. Meeting the onsite landscaping requirement and planting trees in the boulevard could be part of the recommendation. Including trees or shrubs in the onsite landscaping requirement and specifying where they must be placed in order to screen material storage areas could also be part of the recommendation.

If allowed, this proposed addition would be subject to Mandan Architectural Review Committee requirements that would include building appearance, signage and landscaping.

Engineering & Planning Recommendation

If it is determined that the code should be interpreted to require that all tests must be met in order to recommend that the variance be granted, then a vote to deny the request is appropriate.

If it is determined that the code should be interpreted to require that only one test must be met in order to recommend that the variance be granted, then a vote should be taken to determine if a recommendation to grant the variance should be forwarded to the city commission. If the vote is in favor of forwarding a positive recommendation then the recommendation should include the following requirements:

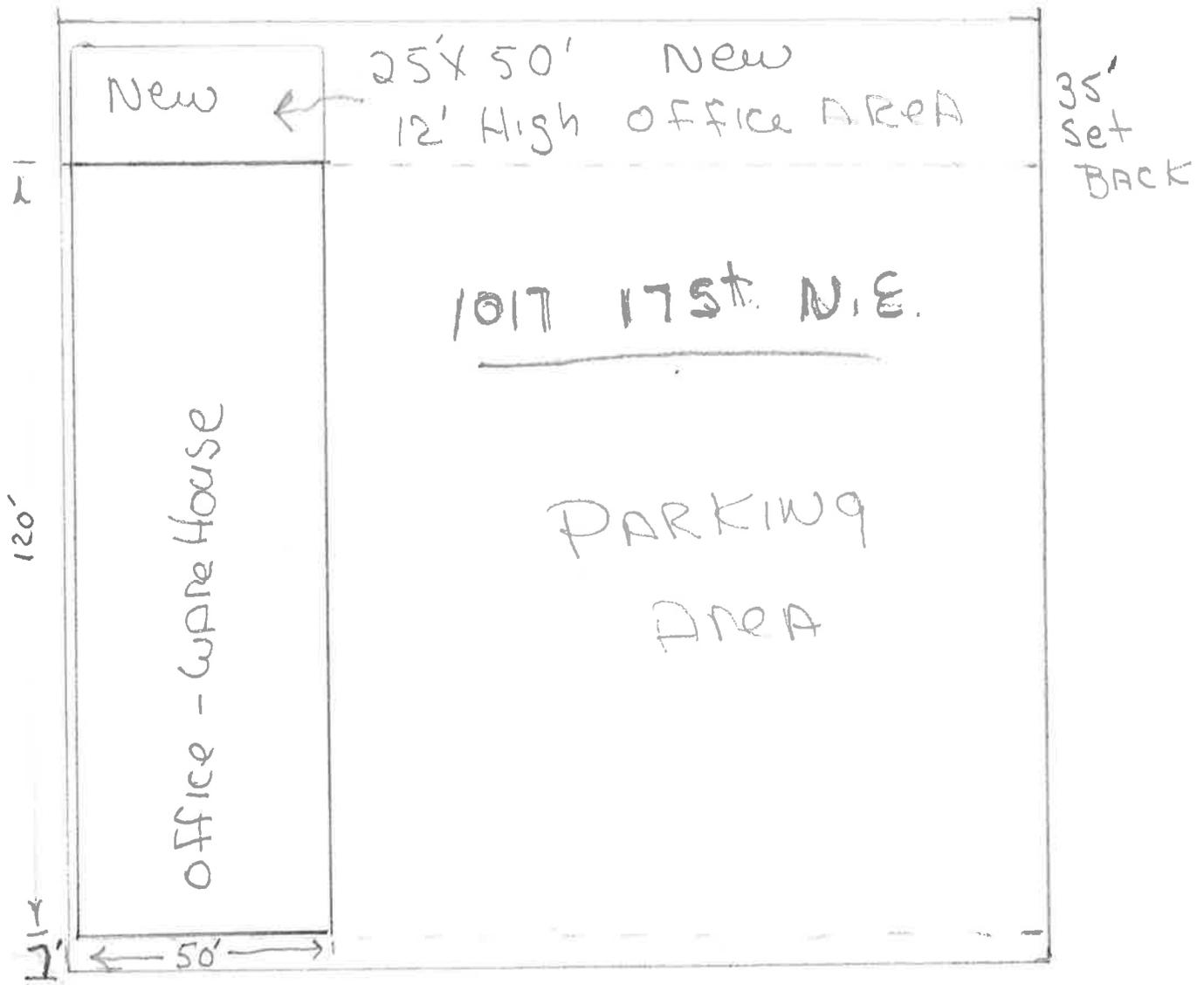
- Trees are to be planted in the boulevard as specified by MARC.
- Trees or shrubs are to be planted onsite along the total frontage of both lots, excluding the driveway, to screen the building and material storage areas.
- Tree or shrub types and sizes are to be specified by MARC.
- The appearance of the building is to meet MARC requirements.
- Any signage is to meet MARC requirements.
- All garbage or trash storage to be screened from view from the street.

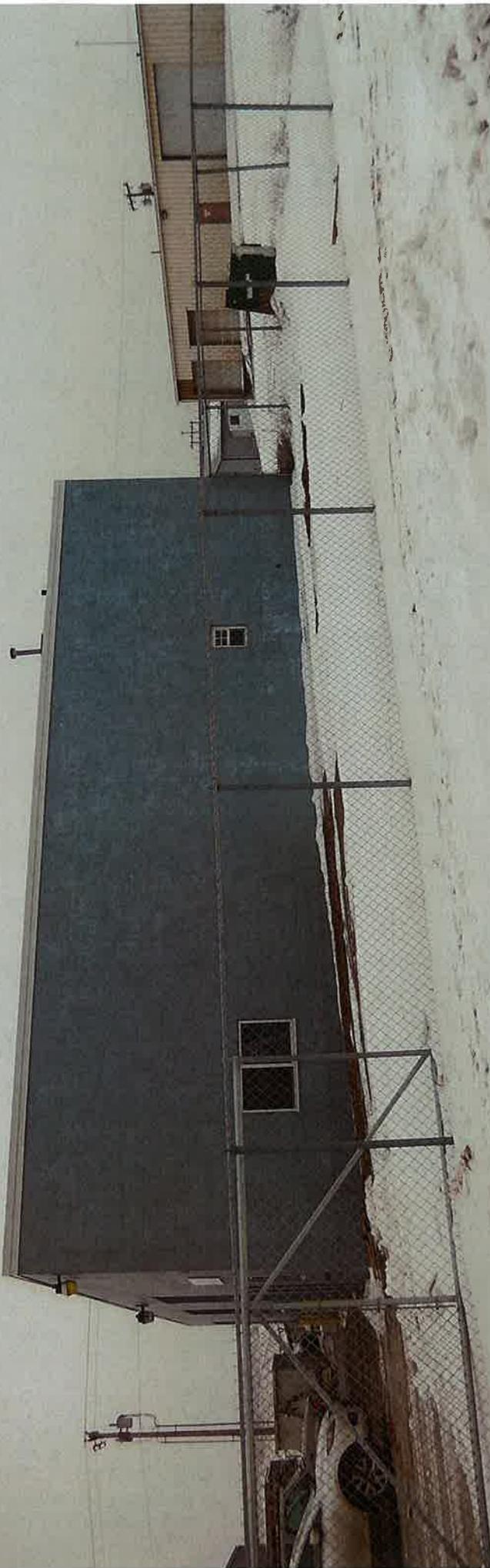
Proposed Motion

MAIL ADDRESS

Ben SchAAF 1785 48st MANDAW N.D.
667-0197

17 Street N.E.





01.06.2016

Legend

Denison's Industrial Park

17th S.W. LINE

2000 ft



Google earth
© 2016 Google



Denison's Industrial Park

Legend

17th St NE



100 ft

Google earth

© 2016 Google



NEW BUSINESS ITEM # 1

OTHER BUSINESS ITEM # 1

ORDINANCE NO. 1235

An Ordinance to Amend and Reenact Portions of Subpart B Land Development and Public Services, Chapter 105 District Regulations (Zoning) of the Code of Ordinances of the City of Mandan Related to Automobile Parking, Sidewalks, Delivery of Goods in Public Places, Building Permits and Approval of Plans, Certificate of Occupancy, Fees, Board of Adjustment and Amendments.

Be it ordained by the Board of City Commissioners as follows:

Section 1. Sec. 105-1-6 is amended to read:

Sec. 105-1-6. - Automobile Off-street parking and loading.

- (a) Off-street parking. ~~Except as provided in this section, no application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such a building, improvement or use a plot plan showing the required open space designated as being reserved for off-street parking purposes to be provided in connection with such a building, improvement or use in accordance with this section. No certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the attached plan. Such Off-street parking for each building, improvement or use~~ shall be provided on the basis of the following minimum requirements:

(1) Dwellings.

- a. ~~Dwellings, including single-family, two-family and multifamily dwellings~~ with individual garages provided for dwelling units.
1. ~~require A minimum of two off-street parking spaces are required for each dwelling unit. Driveways or parking aprons must have an unobstructed length of at least 20 feet between the garage door and any sidewalk in order to be counted as a required parking space.~~
2. ~~During review of a rezoning request, if the proposed design of the project results in there being insufficient space to park at least one guest vehicle per unit along the curb in front of the property, the Planning and Zoning Commission may require that additional off-street parking spaces be provided.~~
- b. Multi-family structures with common underground or ground floor parking garages and common above ground parking areas.

1. Each unit having a living area containing two or more bedrooms shall have at least two parking spaces.
2. One bedroom or efficiency units shall have at least one parking space.
3. During review of a rezoning request, if the proposed design of the project results in there being insufficient space to park at least one guest vehicle per each two dwelling units along the curb in front of the property, the Planning and Zoning Commission may require that additional off-street parking spaces be provided.

c. With Planning and Zoning Commission approval, exceptions to the requirements contained in a. and b. above may be granted for projects catering to a designated group that does not own private vehicles or use privately owned vehicles for transportation that require parking spaces on-site, except that for an efficiency apartment of less than 400 square feet, only one off-street parking space shall be required if the parking space is exterior. Fifty percent of the required minimum parking spaces must be exterior parking.

- (2) Hotels. ~~Hotels, including clubs,~~ require one space for each ~~two~~ guest rooms plus one space for each employee per largest shift. If, in addition to sleeping rooms, patrons or residents are provided with assembly halls, bars, restaurants, nightclubs, retail shops, service establishments or other businesses, additional off-street parking spaces will be required for such other uses in accordance with the regulations of this section ~~for such uses~~. A recorded shared parking agreement with another facility may be used for up to 25% of the required parking spaces.
- (3) ~~Tourist homes, Bed and breakfast and~~ motels, ~~trailer courts~~. Bed and breakfast and Tourist homes, motels and trailer courts require one space for each guest room, ~~or cabin or trailer parking space~~. Off-street parking for auxiliary uses in the same building or on the same lot shall be provided in accordance with the regulations set forth in this section ~~for such uses~~. For ~~tourist homes~~ bed and breakfast uses there must be provided in addition to off-street parking spaces for guests, one additional space for each family permanently residing in the building.
- (4) Hospitals. Hospitals, including sanitariums, ~~orphanages,~~ nursing homes, treatment facilities, and similar institutions require one space for each ~~two~~ four patient beds, ~~plus one additional space for each staff doctor on duty per largest shift and, plus one additional space for each two regular employees per largest shift, including nurses.~~

- (5) Restaurants. Restaurants, including bars, taverns, nightclubs, lunch counters, diners and all other similar dining or drinking establishments require one space for each four seats provided for patron use and one parking space for each employee per largest shift.
- (6) Theaters. Theaters require one space for each five seats provided for patron use.
- (7) Places of public assembly. Places of public assembly, including private clubs, lodges, ~~and~~ fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks, dancehalls, bowling alleys, sports arenas, stadiums, gymnasiums, amusement parks, racetracks, fairgrounds, circus grounds, funeral homes, and mortuaries, community centers, libraries, museums and all other similar places of relatively infrequent public assembly require one space for each ten seats provided for patron use ~~or,~~ one space for each 400 square feet of gross floor area used or intended to be used for service to the public as customers, patrons, or clients, whichever requires the greater number of parking spaces plus one space for each employee per largest shift where applicable.
- (8) Medical clinics. Medical clinics, including offices of doctors, dentists and ~~drugless physicians~~ other licensed medical professionals, require three spaces for each ~~doctor~~ primary medical professional using the office or clinic, plus one additional space for each ~~two medical assistant or~~ regular employee per largest shift, including nurses.
- (9) Retail establishments. Retail establishments, including personal service shops ~~and,~~ equipment or repair shops, ~~in a CA or CB Commercial District,~~ require one space for each 400 square feet of ~~floor patron access area on the ground floor, plus one space for each 400 square feet of floor area in a basement of any story above the ground floor and one space for each 800 square feet of service, storage or employee area.~~
- (10) Office buildings. Office buildings, including commercial, governmental and professional buildings, except as otherwise provided for in this section, require one space for each 400 square feet of floor area.
- (11) Wholesale, manufacturing and industrial plants. Wholesale, manufacturing and industrial plants, including warehouses and storage buildings and yards, public utility buildings, contractor equipment and lumber yards, research laboratories, business service establishments, such as blueprinting, printing and engraving, soft drink bottling establishments, fabricating plants, and all other structures devoted to similar mercantile or industrial pursuits, require one space for each ~~two employees~~ per largest

shift, plus sufficient space to park all company -owned or -leased vehicles, including passenger automobiles, trucks, trailers, construction equipment and similar company-operated motor vehicles.

(12) Terminal facilities. Terminal facilities, including airports, railroad passenger, and freight stations, bus depots, truck terminals and all other similar personal or material terminal facilities, require off-street parking spaces in an amount determined by the board of adjustment planning and zoning commission to be adequate to serve the public as customers, patrons, and visitors, plus one space to provide one off-street parking space for each two regular employees per largest shift and, plus space to provide off-street parking for all owned, leased or operated commercial vehicles, buses, and similar motor vehicles.

(13) Schools.

a. Schools, including Pre-schools colleges, elementary schools, and junior and senior middle schools high schools, including public, private and parochial schools, require one space for each two administrative and support staff members or employees other than teachers, plus one space for each daily use classroom, one space for every three special purpose rooms, one visitor space for every ten classrooms and, plus additional spaces for any places of public assembly that are used during the school day in accordance with the requirements set forth in this section for such uses.

b. High schools and colleges require one space for each staff member or employee other than teaching faculty, one space for each daily use classroom, one space for every ten special purpose rooms, one space for every five enrolled students per class period, one visitor space for every fifteen daily use classrooms and additional spaces for any places of public assembly that are used during the school day in accordance with the requirements set forth in this section.

(14) Correctional facilities. Correctional facilities and similar institutions require one space for each two regular employees per largest shift, plus one additional space for each four-eight inmates beds.

(b) Off-street loading. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial building or use shall be approved unless there is included with the plan for such building, improvement or use, a plot plan showing the required space or structural design for off-street loading purposes to be provided in connection with such building, improvement or use, in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan. Such Off-street loading

space shall be provided for each building, improvement or use in accordance with the following minimum requirements:

- (1) Each department store, freight terminal ~~or railroad yard, hospital or sanitarium~~, industrial plant, manufacturing establishment, retail establishment, storage warehouse or wholesale establishment which has an aggregate gross floor area of 25,000 square feet or more, arranged, intended or designed for such use, shall provide off-street truck loading or unloading berths in accordance with the following table:

Square Feet of Aggregate Gross Floor Area Devoted to Such Use	Required Number of Berths
25,000 but less than 40,000	1
40,000 but less than 100,000	2
100,000 but less than 160,000	3
160,000 but less than 240,000	4
240,000 up to and including 321,000	5
For each additional 90,000	1 additional

~~(2) Each multifamily dwelling having ten dwelling units: One off-street loading berth for ten up to and including 30 dwelling units, plus one additional off-street loading berth for each additional 30 dwelling units.~~

~~(3) Each auditorium, convention hall, exhibition hall, funeral home, hotel, office building, restaurant, sports arena, hospital or welfare institution which has an aggregate gross floor area of 50,000 square feet or more arranged, intended or designed for such use shall provide one off-street loading berth for 50,000 square feet up to and including 250,000 square feet and one additional berth for each additional 200,000 square feet of floor space.~~

- (c) Uses not specifically mentioned. For each use not specifically mentioned in this section, the requirements for off-street parking and off-street loading facilities for a use ~~which is so mentioned and to which said use is~~ determined to be similar in function, shall apply. In such case, either the building ~~inspector official~~ or the applicant for the certificate of occupancy or building permit may apply to the ~~board of adjustment~~ city planner for an interpretation of the provision of this chapter for such off-street parking and off-street loading requirements ~~and the board of adjustment shall render a decision in writing in the manner provided for in this chapter for such action.~~
- (d) Continuing character of obligation. The schedule or requirements for off-street parking space and off-street loading space shall be a continuing obligation of the

owner ~~or of~~ the real estate on which any such structure is located, as long as the ~~structure is in existence, and its~~ use requiring vehicle parking or vehicle loading facilities continues. ~~It is unlawful for an owner of any building affected by this section to discontinue, change or dispense with, or cause the discontinuance or change of, the required vehicle parking or loading space apart from the discontinuance, sale or transfer of such structure without establishing alternative vehicle parking or loading space which meets the requirements of, and is in compliance with, this section. It is unlawful for any firm or corporation to use such building without acquiring such land or other suitable land for vehicle parking or loading space which meets with the requirements of and is in compliance with this chapter.~~ Any change to the required parking or loading facilities must be approved in writing by the building official. The building official may refer the request to the city planner for review and recommendation, who in turn may refer the request to the planning and zoning commission for review and recommendation.

- (e) ~~Fractional measurements. When units or measurements determining a number of required off-street parking and off-street loading spaces result in the requirement of a fractional space, any fraction up to and including one-fourth shall be disregarded, and fractions over one-fourth shall require one off-street parking or off-street loading space.~~
- (f) ~~Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, that when practical difficulties, as determined by the board of adjustment, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished on private property within 400 feet of the premises to which they are appurtenant as documented by a recorded shared use agreement.~~ Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this chapter.
- (g) ~~Plan of required off-street parking or loading area. For the purpose of converting parking or loading spaces into the required parking or loading area, P~~ plans must be submitted to the building ~~inspector official~~ to show how the required parking or loading space shall be arranged ~~in the area supplied for that purpose~~ and to indicate sufficient space for parking maneuvers, as well as adequate ingress and egress to the parking or loading area ~~for emergency vehicles~~. For each parking space not under roof, there shall be provided 200 square feet in addition to all lanes, alleys, aisles and drives necessary for safe and adequate parking maneuvering. For each off-street loading space required by this section, there shall be provided space clear and free of all obstruction, at least ten feet in width, ~~50-75~~ feet in length and 14 feet in height. Off-street parking and off-street loading space shall be provided with methods of ingress and egress such that it

will be unnecessary for trucks or tractor trailer combinations to back into them from a street or out of them into a street.

- (hg) Use of required off-street parking by another building. No part of an off-street parking area required for any building or used for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage of such structure will not be simultaneous with each other, as determined by the ~~board of adjustment~~city planner.
- (ih) Maintenance of public off-street parking places provided. All off-street parking facilities for the use of the public, required pursuant to the provisions of this section, shall be paved, drained, lighted and periodically maintained by the owner in accordance with specifications of the city engineer, and Ssuch facilities shall be arranged for convenient access and safety of pedestrians and vehicles. No open area in an off-street parking area shall be encroached upon by buildings, storage, or any other use; nor shall the number of parking spaces be reduced except upon the approval of the ~~board of adjustment~~planning and zoning commission and then only after proof that, by reason of diminution in floor area, seating capacity, number of employees, or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the intent of this section.
- (ji) Collective action relative to off-street parking and loading. Nothing in this chapter shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses if the total of such space, when used together, shall not be less than the sum of the requirements of the various individual uses computed separately in accordance with this section.
- (kj) Mixed uses. In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections (a) and (b) of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.
- (lk) Nonconforming uses. In the case of nonconforming uses, where major repairs, substantial alterations, or extensions are made, no such major repairs, substantial alterations or extensions shall be permitted unless and until the off-street parking and off-street loading facilities ~~space~~requirements of this section, so far as they apply to the use to which such building is devoted, shall be fully provided for.

Section 2. Sec. 105-1-7 is amended to read:

Sec. 105-1-7. - Sidewalks.

- (a) Duty of developer. Unless other written arrangements have been made with the city, ~~prior to the sale of lots within the subdivision,~~ it shall be the duty of the developers of a new subdivisions to construct or arrange for the construction of all required sidewalks and multi-use paths within the limits of the subdivision and within any areas outside the subdivision so designated during the review and approval process ~~prior to the sale of lots within the subdivision.~~
- (b) Property owners in established subdivisions. Property owners or occupants of lots in established subdivisions shall construct a sidewalk within the right-of-way adjacent to their property unless the city engineer has waived in writing the requirement for a sidewalk.
- (c) Construction of sidewalk prior to occupancy permit. Unless the city engineer has granted a waiver in writing for good cause to allow a specified time delay in installing a sidewalk or specified in writing that a sidewalk is not required, the sidewalk shall be completed to the satisfaction of the city engineer prior to issuance of an occupancy permit.

Section 3. Sec. 105-1-8 and Sec. 105-1-9 are amended to read:

Sec. 105-1-8. - ~~Delivery of goods in public places regulated.~~

~~Any person may place and leave, for a period not to exceed one hour, on an area three feet of the outer edge of the sidewalk, in front of his store or in the alley in the rear of his premises or building, any goods, wares or merchandise which he shall be in the act of receiving or delivering, provided that such goods shall not be packed or unpacked on the sidewalk or street. However, this section shall not be construed as to allow the displaying of goods contained in boxes, crates or barrels or any article or thing unsightly or dangerous to pedestrians or considered a nuisance.~~

~~Sec. 105-1-9. -- Building permits and approval of plans.~~

The building official shall in no case grant any permit for the construction, moving or alteration of any building if the building, as proposed to be constructed, moved or altered, would be in violation of any of the provisions of this chapter. The building official shall consult with the city engineer and/or city planner to determine compliance with this chapter. The building official shall establish requirements for the submittal of plans documenting compliance with the requirements of this chapter. Plans may be submitted electronically with approval of the building official.

~~All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual shape and dimensions of the plot to be built upon, the exact sizes and locations on the plot of the buildings and accessory buildings then existing, and the lines within which the proposed building or structure shall be erected or altered, the existing and intended use of such building or part of a building, the number of families or housekeeping units the building is designed to accommodate, and such other information~~

~~with regard to the plot and neighboring plots as may be necessary to determine and provide for the enforcement of this chapter. One copy of such plans shall be returned to the owner when the plans shall have been approved by the building official.~~

Section 4. Sec. 105-1-10 is amended to read:

Sec. 105-1-~~109~~. - Certificate of occupancy.

It is unlawful to use or permit the use of any building or premises or part, hereafter created, erected, changed, converted, moved, altered or enlarged wholly, or partly in its use or structure, until a certificate of occupancy shall have been issued therefor by the building official. Such certificate shall show that such building or premises or part and the proposed use thereof are in conformity with the provisions of ~~this chapter~~the state building code.

Section 5. Sec. 105-1-11 is amended to read:

Sec. 105-1-~~104~~. - Fees.

The board of city commissioners shall ~~establish~~approve, by resolution, ~~filing~~ fees for ~~certificates of occupancy, variances, special use permits, large-scale development permits, amendments or changes of districts, appeals to the board of adjustment~~processing applications or other actions or proceedings conducted under this chapter. Before accepting for filing processing any application for an activity for which a fee has been established, the ~~building official or other~~ designated city official shall charge and collect the required fees. No fee shall be required for any appeal filed by an agency of government. ~~All fees established under this section are in addition to any fees for building permits, business licenses or any other fees or charges required under other city ordinances.~~

Section 6. Sec. 105-1-12 is amended to read:

Sec. 105-1-~~112~~. - Board of Adjustment.

- (a) The board of city commissioners ~~shall exercise the powers and duties of~~may create a board of adjustment as authorized by N.D.C.C. §40-47-01 and §40-47-07 through §40-47-11 ~~or may perform the functions themselves. The board may, at its discretion, refer requests to the planning and zoning commission for review and recommendation prior to taking action.~~
- (b) The board of ~~city commissioners acting as the board of~~ adjustment ~~is an administrative board whose powers and duties are limited generally by state laws and particularly by the powers and duties set forth in this section. The board of adjustment shall not have the power to amend this chapter on zoning, nor to permit nor prohibit any actions which accomplish an amendment of this chapter~~

~~on zoning, nor to permit any action nor fail to prohibit any action which would violate this chapter. However, it is the declared intent of this section that any actions taken by the board of adjustment, in full compliance with the provisions of this section, shall be deemed to be administrative actions and shall not be interpreted as unauthorized amendments to the chapter. In addition to the powers provided by law, the board of adjustment~~ shall have the following powers and duties:

(1) Variances.

- a. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this chapter in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the chapter would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, ~~but in no other case.~~
- b. No adjustment in the strict application of any provisions of this chapter shall be granted by the board of adjustment unless it finds that:
 1. There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not;
 2. For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant; and
 3. The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- ~~(2)c. Conditional variance.~~—In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of this chapter or preserve the neighborhood or general welfare from injury.
- ~~(32) Allocation of unlisted uses.~~—Upon application of a property owner, or upon a request of the building official or other administrative official or of any official, agency or board of the city, or on its own initiative, the board of adjustment shall add to any use group established by section 105-1-4, any other similar use which conforms to the conditions set forth in the special finding required and listed in this subsection:
- ~~a.~~—Such use is not listed in any other use group, nor is it listed individually as a permitted use.
 - ~~b.~~—Such use is more appropriate in the use group to which it is added than in any other use group.
 - ~~c.~~—Such use conforms to the basic characteristics of the use group to which it is added as set forth in the general description of the use group.
 - ~~d.~~—Such use does not adversely affect the character of any of the districts in which the use group to which it is added is permitted.
 - ~~e.~~—Such use is not likely to create any more traffic than the other uses listed in the use group to which it is added, nor does it create any more offensive noise, vibration, dust, heat, smoke, odor, glare, health or safety hazard or other objectionable influence than the minimum amount normally resulting from the other uses listed in the use group to which it is added.
 - ~~f.~~—When any use has been added to any use group in accordance with the procedure set forth in this section, such use shall thereafter be deemed to be permitted in any district in which such use group is permitted, and to be prohibited from any district in which such use group is prohibited. Such use shall be added to the use group in the published text of this chapter at the first convenient opportunity, with a notation indicating that the addition was made in accordance with this section.
- ~~(4)~~—Renewal of certificate of occupancy for nonconforming use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of section 105-1-1. In granting such renewal, the board of adjustment shall determine that the

temporary continuation will not be injurious to the neighborhood, nor to the public welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension if such extension were refused. The board of adjustment may refuse to grant an extension to the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than 15 days prior to the expiration of the original certificate of occupancy.

~~(5) — Renewal of automatically revoked building permit. Upon appeal by any person holding a building permit automatically revoked by the provisions of this Code, the board of adjustment shall hear and determine whether or not such revoked building permit will be renewed. The board of adjustment shall authorize such renewal only where it specifically finds:~~

~~a. — Construction of the building has, in fact, been started.~~

~~b. — Substantial expenditures have been made for such construction.~~

~~e. — The plans for the building and actual construction of the building are in full compliance with the zoning ordinances in effect at the date of issuance of the building permit and in full compliance with the building code and any other city ordinances.~~

(63) Special uses. The board of adjustment shall, on application, hear a request for a special use in accordance with the provisions of section 105-1-5. The board of adjustment shall grant a ~~permit~~approval for such special use if and only if it finds that such use is in full conformity with all standards relating thereto as specified in section 105-1-5, and with any other conditions, regulations and standards specified elsewhere in this chapter and applicable to said special use.

~~(74) Off-street parking. The board of adjustment shall, upon application, hear and decide any question relating to the decrease of required off-street parking or off-street loading spaces, as set forth in section 105-1-6.~~

~~(8) — Airport zoning. The board of adjustment shall have all powers and duties granted to it by this chapter relating to airport zoning regulation.~~

~~(9) — Recommendations to planning and zoning commission. The board of adjustment is authorized to recommend to the city planning and zoning commission, for study or action, any changes or amendments to the text or district zoning maps that the board finds desirable. The planning and zoning commission shall consider such recommendations and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.~~

- ~~(10) — Special permit for large-scale development. The board of adjustment shall hear and pass upon an application for a special permit for a large-scale development in accordance with the provisions of section 105-4-5.~~
- ~~(115)~~ Miscellaneous powers and duties. The board of adjustment shall have such other powers and duties as may be authorized by this chapter, ~~or any amendment thereto.~~
- ~~(126)~~ Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of this state, this chapter, or any other ordinance of the city, as it may deem necessary to carry out the provisions of this chapter.

Section 7. Sec. 105-1-13 is amended to read:

Sec. 105-1-~~123~~. - Amendments.

Whenever the public necessity, convenience, general welfare or good zoning practice requires, the board of city commissioners may amend, supplement or change the regulations in the zoning ordinance, or the zoning boundaries or classification of property on the zoning map, as set forth in this chapter.

- (a) Initiation of amendments. A proposed amendment may be initiated by the board of city commissioners upon its own motion, or upon receipt of a request therefor from the planning and zoning commission, or upon receipt of a petition therefor from any interested person or their agents.
- (b) Report by planning and zoning commission; public hearing. The board shall require a report from the planning and zoning commission on a proposed amendment before taking final action thereon. The planning and zoning commission shall ~~thereupon~~ make a tentative report and hold a public hearing thereon with notice the same as required for a public hearing by the board of city commissioners, before submitting its final report. Such final report shall be submitted within 90 days of the referral of the proposed amendment to the planning and zoning commission unless the board is agreeable to an extension of time.
- (c) Action by board of city commissioners; public hearing. After ~~the~~ receipt of the required final report on any amendment from the planning and zoning commission, or in the event of the failure of the planning and zoning commission to so report ~~within 90 days following the time of referral of the proposed amendment to the planning and zoning commission~~, the board shall hold a public hearing, after which the board may make a final determination on the proposed amendment. A hearing shall be granted to any person interested at the time and place specified.

Section 8. Effective Date. This ordinance shall take effect when adopted.

By: _____
President, Board of City Commissioners

Attest:

James Neubauer, City Administrator

First Consideration: _____
Second Consideration and Final Passage: _____