

MANDAN ARCHITECTURAL REVIEW COMMISSION MINUTES

March 19, 2013

The meeting was called to order at 1:00 p.m.

ROLL CALL: Robert (Bob) Vayda/President, Steve Nardello/Fire Chief, Steph Smith, Richard Barta/Building Official, Jason Krebsbach & Kim Fettig/City Engineering.

GUEST: City Attorney Malcolm Brown

MEMBERS ABSENT: Jerome Gangl, Leonard Bullinger, Rick Zander

FIRST ORDER OF BUSINESS: No one showed up to represent the proposal for Chris Goldberg of CJ Rigging to construct heated rental shops located at 2939 Twin City Drive. There will be two phases to this project; first phase to include 6 units of shop space with a building size of 70' x 210' with future plans of expansion of a second phase to include an additional 6 units of shop space with a building size of 70' x 209.4'.

One thing that stood out was they have a location plan but they are talking about doing the project in two phases and have no idea on how they are going to do this; it is lacking information. It doesn't show a site plan. There is nothing here to indicate fire department access around the building. This is located right along the interstate; it is 200 feet in the right-of-way. It has over 12,000 square feet of storage so it would be required to be sprinkled unless it is fire separated. It is located in the Gateway area, as it appears to be touching the lots. There is some specific design guidelines that they need to adhere to because it is in the Gateway and we would need to review those before they submit again. We need a plot plan to see exactly where it is located.

Steve motioned to deny as we need more information such as plot plan, specific design guidelines, storm water plan and indication if there is fire department access.

Richard seconded.

Upon roll call vote, the motion passes unanimously.

DISCUSSION: Ladel Wilson of American Lutheran Church would like to discuss the height restrictions for putting up a cross at the church located at 1101 10th St. SE. He indicated they would like to put up a cross that is 30' to 36' high made out of steel. They would like so it can be viewed from Highway 1806. This doesn't touch the Gateway area; it is located in a residential neighborhood in a cul-de-sac. The cross will be lit up with lights shining up at an angle from below. They probably will go with a 30' high sign so they don't have a splice in it. MARC did not see any problems with this other than a concern that if it is lit that it doesn't shine on homes surrounding the area. There really are no restrictions in that area. The sign policy states it is 25 ft. in the Core District, 40 ft. in the Fringe District, and 60 ft. in the Gateway District. This is not in the Gateway area. MARC indicated to Ladel

that he may want to put a flower box on the bottom to hide the lights from the back so they don't shine up on the neighbors.

Kim motioned to approve as long as lights don't shine on neighboring homes.

Richard seconded.

Upon roll call vote, the motion passes unanimously.

OTHER DISCUSSION: City Attorney Malcolm Brown is here to discuss the procedures and enforcement for violators of our sign policy.

MARC indicated we had some people come before us pleading ignorance to the sign policy and saying that they invested a certain amount of dollars for their sign. They have the wrong colors, which we did give a break on that. We told them they could have one sign. The wall sign did not meet the letter on the sign policy either, but we felt it was close enough we could let that one go. We did ask them as well as sent out a letter to take the projecting sign down because it was not compliant. In addition to that we also sent a letter to Huntington Books. City Attorney Malcolm Brown indicated he received copies of four letters that the Assessing and Building Inspections Department sent out which had given them 30 days to comply. As of this date, they have not complied; therefore, City Attorney Malcolm Brown indicated he will be sending out a letter to remind them that they have to correct the deficiency and if they don't, the building official can file a complaint in Municipal Court and that it is an infraction. This letter will come from the City Attorney reminding them that it is a violation of the city ordinance and is punishable by a fine. The question MARC has is what to do about paying for the fine or taking down the sign, what is the city's liability here if they don't adhere to the letter and we take them to court. Can the city touch that private sign and take it down and charge them for it.

Malcolm stated ultimately, the way the process would work is it would be an action in District Court for an injunction to adjoin them from having that sign up and assuming the court did agree and that it didn't comply with the ordinance, the court would order them to take it down and if they didn't the city could take it down, just like sidewalk repairs and assess it to the property. It is a pretty severe remedy for a sign, but that is generally how to correct violations of building codes and that would be the process you would take. Just for example if an apartment building didn't have fire exits and things like that, that is what you would do is get an injunction to have the deficiencies corrected. It was mentioned that it has always been a struggle for the Assessing and Building Inspections Dept. to follow up on this because they have so much going on and then to follow up on these violations that we just don't have the staff to do it. Richard is going away but the problem is not going away. What can the city bear here with this problem? We have gotten frustrated in the past because we feel like we are trying to hold everybody's feet to the fire with regard to compliance but there are those that are willing to comply and there are those that don't. Of course the ones that don't comply seem to be getting away with it. In this case, one of the reasons the Thrift Shop put up the projecting sign is because they looked at the one that was on the book store and that seemed to be okay so they thought they could do one like that too so now we kind of are establishing precedent through lack of enforcement and we feel it is just going to get

worse and worse. So if we start on an active campaign of making a point of issuing these letters and that if there is no follow up and we don't have the staff or the means by which to follow up on those letters, where does that leave us? Malcolm said, again, it is like so many things we do that are routine, it comes to your attention and you write them a letter so someone will need to tickle it for 30 days or whatever then give to the city attorney to write a letter. We have two city attorneys so Malcolm is a civil one and Dan Nagle does the prosecutions in Municipal Court so the actual filing of complaint would be done by Dan Nagle and they would appear before Judge Kautzmann as to why they haven't taken their sign down because it doesn't comply with the ordinance. We have never done that but that is the step out of the ordinance that we can take. This filing of complaint would come out of the Building Inspections Department because that department is in charge of enforcing the building code. There are many things in the ordinances that are infractions and some are misdemeanors. In order to fine the violators and charge to the property, we would have to go through the District Court, which I really don't think people would take it that far because that is complicated and expensive.

The policy was put into place for the good of everyone. Everybody gets treated fairly. It is an issue of fairness of those that choose not to comply are reminded to comply and then asked to comply formally with a letter and if they still don't want to listen then will need to get a letter from the City Attorney, which I would hope at that point, they would take serious and would decide they better do something. I think in rare cases you may have to take it to court. With the sign regulations we have on portable signs and temporary signs, we don't know who is going to enforce that because we are already ahead of permits from last year and last year we just about doubled our permits and we are just not going to have the staff. I think the issue with the portable signs, temporary signs and banners; it has to be more of a PR campaign through the newsletters and through Ellen's office and to work with her. We have good compliance with the sign policy because most of the sign companies know what the rules are, but in this case, they did their own, they had a sign company that provided them with some graphics and panels; yet what they told us is that the sign company didn't tell them about the fact that they had to comply with the design guidelines so there was a failure on somebody's part, but for the most part we have really good sign companies that work with their clients to comply with the policies so I don't see it being a big problem down the road but we may have a problem if we have people who are out of compliance and are just allowed to stay out of compliance.

Bob asked if the City Commission could stop Malcolm from writing a letter if they feel they don't agree with it. Technically, the way it would work is the City Commission could grant a variance to permit something that doesn't comply with the building code. If they show a variance, then they are accepting the violation or whatever it is, then it is not a violation.

Richard stated he had a phone call about those boats that are parked down off of 46th; Malcolm stated he is working on that.

In summary, City Attorney Malcolm Brown discussed the procedures and enforcement for violators of our sign policy. Building and Inspections will send out certified letters notifying those that violate the sign policy and give 30 days to correct it. If they do not comply within 30 days, Building and Inspections will notify City Attorney Malcolm. Malcolm stated he

would send out a letter informing them they have so much time (two weeks) to comply or further action will be taken. If they still do not comply after the two week notice from Malcolm, then it will be referred to Dan Nagle City Attorney to file an injunction with the court. This would be an infraction and would need to appear before Judge Kautzmann. If they don't comply after that, it would then need to go to District Court for violations of city policy and to remove the sign and be billed right in with their tax assessment.

To follow with the 30 day notice of letters sent out by the Building and Inspections Department, a tickler file would need to be set up. Once 30 days has gone by and if they are still not in compliance, then Building and Inspections will notify Malcolm Brown to follow up with a letter.

Richard indicated we do not have enough staff in the Building and Inspections Department to police all of the sign violations as well as temporary sign violations. It was decided that we would need to do a more active PR campaign and work with Ellen.

There being no further business, the meeting was adjourned at 1:40 p.m.

Approved by:

Date

Transcribed by:
Rachel Hastings/Admin. Assistant