



AGENDA
MANDAN PLANNING & ZONING COMMISSION
COMMISSION ROOM 5:15 P.M.
OCTOBER 26, 2015

Roll Call, Reading and Approval of the September 28, 2015 minutes.

NEW BUSINESS

1. A request from Mandan Parks & Recreation District for preliminary plat approval of Old Red Trail Commercial Subdivision (Sports Complex).

OTHER BUSINESS

1. Review and discussion on revised Municode Sections 105-1-6 through 105-1-13.
2. Consider changing the November meeting date to the 30th.

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL BUILDING
September 28, 2015

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall Building on September 28, 2015, at 5:15 p.m. CDT.

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

Commissioners Absent: Fleischer, Mehlhoff

Commissioner Leingang motions to approve the August 24, 2015 minutes. Commissioner Knoll seconds. Upon vote, the motion receives unanimous approval of the Board.

NEW BUSINESS

1. A request from Blaine Engelstad for a variance to allow relocating an existing garage on Lot 1, Block 1, North Prairie 5th Addition in Section 8, Township 139N, Range 81W at 5305 Highland Road N.

Bob Decker, City Planner, describes and identifies the area. This is a 4 acre parcel. The existing house sits approximately in the center of the parcel. The R7 standards expect accessory buildings are placed in the back or side yards. Because this lot is so large, there is ample room in front of the main building. There would be a setback of at least 150' from the property line. There is an electric line close to the house on the south side. There are also topography and wetland issues. The staff report does recommend approval.

Commissioner Zachmeier, "Mr. Chairman, it talks about multiple properties or lots that have received something similar. So far, I only know of one. It says neighboring lots have structures closer to the road than what his garage will be. I think evidence needs to be shown of that. Also, if other variances were given in the area for those structures, I think evidence needs to be shown that is a common practice for the area. Finally, what is the overall hardship? We don't have a topography map on here that I can see to show what would be the wet area. In my general opinion, Mr. Chairman, I feel this report is highly inaccurate. At least not to full standard of what we should expect. The definition of a variance is there, but where is the evidence to support the variance? Mr. Chairman, County Engineer did look at this at my request and county standards is that it has to be 120' off the road way. If there are other structures closer to the road, than who granted the previous variances? If this is something that needs to be changed, should we be better off declining the variances and asking for a new ordinance to lessen that distance, which in that case, on a county roadway, the county will want a 120' setback. I think more evidence needs to be provided than just this report."

Bob says the neighboring house and garage are closer to the road. The houses on the other side of the road are much closer to the road. When you look at the aerial photography for the

area there are other structures, not only garages, but houses that are substantially closer to the road.

Commissioner Zachmeier asks why this is constantly occurring and why are building permits being given without the proper variances. He says somebody in the city is dropping the ball on this.

Bob says this is zoned R7, which has a 25' setback. So the questions are whether the county standard even applies. It is a county road in the extraterritorial zone, where the city has jurisdiction.

Commissioner Zachmeier says he represents the county's interests. The county engineer and planner say the setback is 120' from the centerline. If the houses are being allowed closer, somebody is making a mistake. This has been in city extraterritorial for a number of years. Some of these houses, if they are being given a building permit, then it's an issue of fairness. Why were they given a building permit without a variance? Why is this gentleman required to apply for one?

Bob says we are working with R7 standards that says the building is supposed to be placed behind or the side of the main structure. He doesn't know how the existing properties were built like they are because it happened years ago.

Commissioner Zachmeier thinks there should be some kind of history or documentation. Using a variance to fix prior wrongs bothers him because that isn't the point of a variance. If we are going to change the regulations, then the variance should be denied and the regulations changed. Bob says there is an ordinance in place that we are acting on the standards present. Request for variance is based on hardship of the lot being large and topography issues.

Commissioner Zachmeier thinks it should come from the engineering division. He doesn't think this one is well documented. There should be better evidence presented. Bob says the information given by the applicant was reviewed by staff and determined it was sufficient.

Commissioner Zachmeier asks where are the neighboring lots that the report says has this. Bob says the report says other properties have structures that are substantially closer.

Commissioner Leingang says we don't know if the county or the city issued these permits in the past. Commissioner Zachmeier says he agrees, but the evidence should be provided and he would stand by that.

Commissioner Zachmeier, "This variance appears to me to do nothing but fix a mistake by staff in the past. I know that was before your watch. These are times where it definitely indicates that staff was not doing what they should have been doing way back when and now they have to use variances to try and fix it. There were a lot of mistakes made and one of

them was variances given without following standards was one of the main things I was elected upon. Are you going to be the same as the other county commissioners that give out variances without any rhyme or reason to circumvent your own rules? Are you going to treat people fairly or does this person get a variance and this person doesn't because this person is a friend or political ally, but this person is just an average citizen. So, if something needs to be fixed, let's fix it and I don't think variances is the best way to do it."

Commissioner Knoll says the house to the south has a detached garage towards the front. She asks if Bob knows how far back that is. Bob says he did check that one and it was built in 2011 and it is 65' from the property line. Commissioner Zachmeier says that never before the county planning & zoning board. Bob says the building permit was issued through the city.

Building Inspector, Doug Lalim, says he understands when the city controls an extraterritorial jurisdiction it is zoned under city standards and the city trumps anything the county has. The city controls two things in the extraterritorial jurisdiction and that is zoning and building. When a permit comes in staff follows city zoning. In the city's R7 standard the setback is 25' and that is probably why we are seeing structures that are not 120' setback.

Commissioner Zachmeier says if we go with that argument then he doesn't need a variance. Bob disagrees because the R7 standard says the detached accessory building goes behind the main structure. Zachmeier thinks this is a waste of time.

Blaine Engelstad, 5305 Highland Road, is the applicant and describes his property. Bob also explains how the wetlands and power lines run. The middle of the backyard can get to be a mud hole when there is a lot of rain or during spring melt.

Commissioner Laber joins the meeting via conference call at 5:29 p.m. There were technical difficulties getting her patched in the phone system.

Commissioner Laber says she has a topographic map of his property and can see where the decline of elevation in the back is approximately 10 feet. There are things he could do to mitigate that. Just like he did with building up his driveway and house. She asks if this was considered. Blaine says they still have a power line running through there and he doesn't want to be on top of that.

Bob says the intent is to move the current garage and build a second garage attached to the residence.

Commissioner Zachmeier says he is going to vote for the variance but he does not think it is a very good staff report. There is no topography map, it does not show neighbors structures and it does not say how building permits are issued. If we are going to follow a 25' setback, this gentleman should not be required to get a variance. Nobody else had to get a variance. He feels the history documentation was not properly presented.

Commissioner Laber says it does seem there are secondary buildings in front of the primary buildings in the neighborhood. She will agree to this variance but thinks we need to look at the ordinance or how building permits are being issued to avoid this in the future.

Commissioner Leingang motions to approve the variance. Commissioner Klein Seconds. Upon vote, the motion passes unanimously.

2. A request from Verity Homes for final plat approval and a change of zoning. The request is to change the zoning of Lots 9-16, Block 1, Heart Ridge Addition Replat in Section 34, Township 139N, Range 81W, from RM (Multi-Family Residential) to PUD (Planned Unit Development). The property is located on 14th Street SE west of 8th Avenue SE.

Bob Decker, City Planner, describes and identifies the area. This is a mixed use area. It has a mobile home subdivision to the northeast, 2 four-plex units to the east and single family residential to the west. The request is for a 14 unit townhouse project. There would be 6 units in the front, facing the street and 8 units to the rear, facing south. The lots are narrow and the configuration would allow FHA financing. PUD is requested to adjust some of the development standards. There are a couple twin homes across the street. The standard for RM is 30 units per acre. This project is 18 units per acre. Two of the lots are for parking. The front setback will be 15' on some of the units and close to 30' on the remainder. There is a single-family home to the west. There would be a 50' setback from the west property line to the first structure. These buildings would be 3 stories. Each of the units has a two stall garage with storage area. The garage access is in the middle of the structures. The units would be 2 or 3 bedroom. The developer has sold these in Bismarck and Lincoln. The street would be private and maintained privately.

Justin Froseth, City Engineer, says the stormwater has been submitted but not yet approved.

The wooded lot to the south is under separate ownership.

Commissioner Laber likes the PUD request because it would have to come back for approval. The intention of the restrictions put on this lot a few years ago had to do with not allow building high density, high visibility and large multi-family.

Bob says these would be for sale and would not be an apartment complex.

Mayor Van Beek asks if the original restrictions called for a 2 story maximum. He remembers the height being contentious with the neighbors. Bob says RM allows for 6 stories. He thinks the restrictions previously placed on the RM zoning could possibly be challenged in court. He says there isn't a RM Restricted zone. The PUD can specify modifications.

Commissioner Leingang doesn't like the 3 story request when a compromise was made with neighbors in the past.

Commissioner Leipzig is hesitant to use PUD to get around whatever doesn't fit in a zoning district. He asks how Bob sees that from a planning perspective. Bob thinks modifications have to be done to the zone classifications to bring them up to the current standards of construction. If the zones aren't meeting the needs of the development community, then you are always looking at modifying a standard and maybe the standard needs to be changed. The housing inventory is low.

Sandra Brinkman, 813 14th Street SE, "I live in the townhomes directly to the east. The buildable area in the back...behind what they want to develop...Access is from 8th Street?"

Bob says there is a large parcel that wraps around the 4 plexes and this parcel. It starts at 8th and runs along the back before it drops away into the drainage area. There is some potential buildable land in there.

Mayor Van Beek asks for a google map to shown.

Sandra Brinkman says she thought that land was owned common interest property for her and others in the 4 plex.

Bob says if it is constrained then it is not likely anything will be built there.

Jim David, 1812 8th Ave SE, "We've been working on this for about 4 1/2 years. We started in May of 2011. We fought the 3 story they tried putting in on lots 31 & 32, which is south of this area. Our concern was at that point they were trying to put in 30 unit apartment buildings. They were 3 stories high. So, we finally get it down to where it was no more than 2 stories high. Originally, it was 5 units per acre and that was not agreeable with them. The compromise was 10 units per acre, 2 stories high. Wachter was ok with that at the time. He said himself he would not want a development without a buffer zone from the trailer court. This is directly opposite the trailer court. My concern is this sets a precedent for lot 31 & 32. They will come back with another PUD. PUD is going to be for 31 & 32. It was Dave Patience for Wachter development who introduced the idea of a proposed unit development to the city of Mandan. My main concern is with lots 31 & 32 with the 18 units here that's doubling size of what is permitted out there right now...the 10 units per acre. So, if we let this one go through for 3 stories and 18 units per acre then lots 31 & 32 they're going to come to you and request the same type of development then we're going to get into the high density in the area. Not only high density but towering structures across the street from people who have been there for 35 years."

Wayne Leno, 709 14th Street SE, "I'm opposed to these zoning changes as per our ordinance that was put back in place in July of 2012. I believe it is Ordinance 1124, which clearly states that we restricted the heights of these buildings to 2 stories. Along with that, it did not allow underneath parking, which these structures will be parking underneath. To go along with that,

the proposed structure is required under section 21-03-10 #1 to have 50% of the parking exterior. The proposed site plan only allows for 9 maybe 10 spots is what we've been told, which means we need a remaining 4 or 5 spots on the street. If you go to that same section, maybe number 7. All parking should be on the same lot or parcel of land as the structure. I leave you with this last comment, how would you feel to wake up every morning in your single family home looking at a 3 story structure?"

Landon, Swenson Hagen, says these lots are intended to be for sale. Part of the reason the buildings are planned for where they are is to give the single family homes buffer. It's 50' at its closest point. The parking ordinance that calls for 50% exterior parking is for multi-family that will have a lot of visitors. The developer has no intentions at this time to purchase lots 31 & 32. If somebody did come forward to develop those lots as a PUD, it would be done as a case by case basis.

Sandra asks to see a picture of the plan. She said it looks like there will be 4' between her west building and where cars will be parking. It is approximately 5'. She was under the impression when she purchased her home that it was going to be a quiet neighborhood and 2 more like hers were going to be built to the west. All the area to the south would be their common area.

Commissioner Leingang asks if this will go back to RM if denied.

Commissioner Robinson likes the project but doesn't like the location and the 3 stories.

Commissioner Laber remembers the restrictions were put in place because the request was for a large multi-unit complex. That would have been high density and a significant increase in traffic. This project offers a single family opportunity. The traffic increase will be minimal.

Commissioner Laber motions to approve the PUD request for the final plat. Commissioner Van Beek seconds. Upon vote, the motion is denied with the following vote: Zachmeier-aye, Kelly-nay, Klein-nay, Knoll-nay, Van Beek-aye, Leingang-nay, Laber-aye, Liepitz-nay, Beach-nay, Robinson-nay.

OTHER BUSINESS

1. Public hearing to consider adopting amendments to Subpart B Land Development and Public Services of the recently adopted new city code.

Bob Decker, City Planner, says the commissioners have received a marked-up version and a clean version of the Subpart B Land Development. He asks the commissioners if they have comments or questions.

Some of the changes included:

- He incorporated 6 months as the length of time a planning commission approval is valid.
- Modifications of structures excluded from height limits. Radio towers was changed to Broadcast and communication towers.
- Cleaned up the language on *Projections into yards*.
- Substantial changes made to fences and walls. Sight triangles are spelled out and fence materials addressed.
- Requirements for accessory buildings were modified. For example, garage doors facing alleys.
- What is included under structures?
- Commercial vehicles on residential properties.
- Language updated on home occupation uses like dog daycare, pet grooming, consulting services and daycare.
- A decision matrix was added to the use groups section. If a use comes up that isn't currently listed, the matrix will help determine what group to put it in.
- Wording was changed in other use groups.

Commissioner Leingang motions to forward the municode revision to City Commission for approval. Commissioner Beach seconds. Upon vote, motion passes unanimously.

Going back to New Business Item #2 Heart Ridge Cove plat and zone change to PUD, Commissioner Zachmeier thinks because the motion to approve failed another motion to deny the plat and zone change needs to be made. The commission has 3 choices: approve, approve with conditions or deny. He reads ND Century Code 40-48-21: *The commissioner shall state the grounds on which any plat is approved or disapproved. Written findings upon which the decision is based be included in the records of the commission.*

Commissioner Beach motions to deny the Heart Ridge Cove plat and zone change to PUD based on height restrictions that were previously discussed. Commissioner Knoll Seconds. Upon vote, the motion passes with the following vote: Zachmeier-nay, Kelly-aye, Klein-aye, Knoll-aye, Van Beek-nay, Leingang-aye, Liepitz-aye, Beach-aye, Robinson-aye.

Mayor Van Beek motions to adjourn. Commissioner Knoll seconds. Motion passes unanimously. Meeting adjourns at 7:09 p.m.

NEW BUSINESS ITEM # 1

NEW BUSINESS ITEM # 1

Mandan Planning and Zoning Commission Agenda Item
 For Meeting on October 26, 2015
 Mandan Engineering and Planning Office Report
Old Red Trail Commercial Subdivision
 Requested Action
Plat for Mandan Sports Complex and commercial parcel to the east

| Application Details | | | | | |
|---|---|---|---|---|----------------------------|
| Applicant KLJ | Owner Mandan 94 Investors. LLP & Park District | Subdivision Old Red Trail Commercial Sub. | Legal Description Portion of Section 22, T139N, R81W | | |
| Location Old Red Trail east of Collins | | Proposed Land Use Sports complex and commercial | Parcel Size 61.707 acres | Number of Lots 8 | |
| Existing Land Use vacant | Adjacent Land Uses Industrial, commercial & I-94 | | Current Zoning MA | Proposed Zoning CC | Adjacent Zoning MA & MC |
| Fees | Date Paid | Adjacent Property Notification Sent None for preliminary | | Legal Notices Published None for preliminary | |

Project Description

This proposed replat splits the parcel into 3 large lots and 5 small lots for billboards. The northwestern large parcel will be developed with a sports complex and the eastern large parcel will be developed with commercial at a later date. A third large parcel runs along the south side of the multi-use path. There are also 5 billboard sites that are defined separately.

The proposed Park District/School district project is planned to be completed and open for operation in late summer of 2017. Timing of development of the commercial property to the east has yet to be determined.

Numerous design options have been explored in order to get to this point in the process. Adjustments to the design are continuing. Sufficient detail has been developed to submit a preliminary plat.

The proposed new street will be a public street. A petition to create an assessment district will be submitted.

Agency & Other Department Comments

Engineering & Planning Staff Comments

A trunk sanitary sewer must be developed through this site. Service to existing developments to the west along the north side of I-94 will be rerouted through this new sewer to relieve capacity issues in existing sewers along 14th St. NW. This sewer will also provide capacity and service to the newly annexed area north along 1806. This sewer has been identified in the sewer master plan. The proposed alignment begins at the eastern edge of this property where an existing trunk sewer is located in 16th St. NE. From there the new sewer will be constructed west and then north to Old Red Trail generally following the alignment of a proposed new street. From there the trunk sewer will run along Old Red Trail to Collins. A public right-of-way or utility easement through the property will be required for this sewer.

A trunk waterline runs along Old Red Trail and then diagonally from north to south through this site. The location of this old line is in conflict with portions of the proposed development. The proposed development will require significant re-grading which could place significant additional fill on top of this old line. Due to the age and condition of the line, it is not advisable to add significant additional fill over the line and then place

high value improvements over the waterline. Portions of the line will have to be moved. There is no record of a recoded easement for the existing waterline. A new easement will be required.

The proposed development can connect to the existing sanitary sewer and water line running through the property. The existing sanitary sewer was installed in a designated wetlands and will be difficult to connect to. If timing allows, the proposed project could connect to the new trunk sewer.

A traffic study has been prepared that evaluates the impact of this project on Old Red Trail. That report must be submitted to NDDOT for review and approval. The location and number of access points along Old Red Trail will be determined in consultation with NDDOT.

Creation of an assessment district for the new street will need to wait until all water and sewer issues have been resolved.

Engineering & Planning Recommendation

Approve the preliminary plat and recommend submitting the final plat to city commission once location of all required easements have been finalized.

Proposed Motion

OTHER BUSINESS ITEM # 1

OTHER BUSINESS ITEM # 1

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 shall be provided on the basis of the following minimum requirements:
- (1) Dwellings. Dwellings, including single-family, two-family and multifamily dwellings require two off-street parking spaces for each dwelling unit, 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 two employees per 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.
 - (3) Tourist homes, motels, trailer courts. Tourist homes, motels and trailer courts require one space for each guest room, 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 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 patient beds, plus one additional space for each staff doctor on duty per shift and, plus one additional space for each two regular employees per 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 two employees per 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 two employees per shift.
- (8) Medical clinics. Medical clinics, including offices of doctors, dentists and drugless physicians, require three spaces for each doctor using the office or clinic, plus one additional space for each two regular employees, 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 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 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 shift

and, plus space to provide off-street parking for all owned, leased or operated commercial vehicles, buses, construction equipment and similar motor vehicles.

- (13) Schools. Public, private and parochial schools, Schools, including pre-schools, colleges, elementary schools, junior and seniormiddle schools, high schools and, colleges including public, private and parochial schools, require one space for each two staff members or employees, plus one space for each classroom and, plus additional spaces for any places of public assembly in accordance with the requirements set forth in this section for such uses.
- (14) Correctional facilities. Correctional facilities and similar institutions require one space for each two regular employees per shift, plus one additional space for each four inmates.

(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 Nno 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 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 or more dwelling units shall provide: oOne 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 or the applicant for the certificate of occupancy or building permit may apply to the board of adjustment planning and zoning commission for an interpretation of the provision of this chapter for such off-street parking and off-street loading requirements and the planning and zoning commission 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 chief building official. The chief building official may refer the request to the planning and zoning commission for review and recommendation. The review and recommendation by the planning and zoning commission will be treated the same as a variance request.
- (e) Fractional measurements. When units or measurements determining a the 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 adjustmentplanning and zoning commission, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within 400 feet of the premises to which they are appurtenant. The off-street loading facilities required by this section shall, in all cases, 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, plans must be submitted to the building inspector 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 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.
- (h) 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 adjustmentplanning and zoning commission.
- (i) 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 adjustmentplanning 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.

- (j) 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.
- (k) 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.
- (l) 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.

Sec. 105-1-7. - Sidewalks.

- (a) Duty of developer. Unless other written arrangements have been made with the city, it shall be the duty of developers of 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.

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

Any person business owner may place and leave any goods, wares or merchandise , which have been received or which the business owner is in the process of loading for delivery for a period not to exceed one hour, on the boulevard or a portionan area three feet of the outer edge of the sidewalk, in front of his the business for a period not to exceed one hour. An area at least three feet wide shall remain open along the sidewalk. Should the activity

occur store or in the alley in the rear of his premises or adjacent to the building, an unobstructed driving lane a minimum of nine feet wide shall be maintained in the alley 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 city planner to determine compliance with this chapter. 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, the location of required parking and loading facilities, utility service connections 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. Plans may be submitted electronically with approval of the building official. One copy of such plans shall be returned to the owner when the plans shall have been approved by the building official.

Sec. 105-1-10. - 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.

Sec. 105-1-11. - Fees.

The board of city commissioners shall establish, 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 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.

Sec. 105-1-12. - Board of Adjustment.

- (a) The board of city commissioners may create a board of adjustment as authorized by N.D.C.C. or may perform the functions themselves. The planning and zoning commission shall perform the functions of the board of adjustment.
- (b) 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;

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) 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.
- (3) 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.
 - c. 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.
- (6) 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 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.
- (7) 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.
- (1110) 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.
- (1211) 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.

Sec. 105-1-13. - 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.