

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 150ø 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, øMr. 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 donø 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 120ø 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 120ø setback. I think more evidence needs to be provided than just this report.ö

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 15ø on some of the units and close to 30ø on the remainder. There is a single-family home to the west. There would be a 50ø 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 Leipitz 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.