

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
April 22, 2019

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on April 22, 2019, at 5:30 p.m. CDT.

ROLL CALL

Commissioners Present: Klein, Knoll, Helbling, Leingang, Laber, Liepitz, Frank, Renner, Camisa, Robinson

Commissioners Absent: Boehm, Klemisch

Commissioner Knoll motions to approve the March 25, 2019 minutes. Commissioner Camisa seconds. Upon vote, the motion passes unanimously.

PUBLIC HEARINGS

1. Consider a request from Val Renner and Janet Dykshoorn for preliminary plat, zone change and annexation approval of Evergreen Heights 3rd Addition. Said property is part of Lot B of Auditor's Subdivision and all of Lot A and Lot B of Lot B Auditor's Subdivision and Lot 1, Block 1, Evergreen Heights in the SW ¼ of Section 35, Township 139N, Range 81W. The requested zone change is Agricultural to RM Residential and CA Commercial.

A. Staff report.

John Van Dyke, City Planner, describes the request. Val Renner and Janet Dykshoorn are seeking to plat their property near 19th St. SE and S. 1806 for the purposes of commercial and residential development. The property in question totals 9.81 acres.

Mr. Renner would like to erect shop condos for his landscaping business and similar contractor businesses on Lot 3, Block 1 of the proposed plat (See Exhibit 2 and 3). No residential uses are desired on that lot. Ms. Dykshoorn would like to maintain her single-family dwelling on Lot 2, Block 1.

For Lots 1 through 3, Block 1 and Lot 1, Block 2 they are seeking CA – Neighborhood Commercial zoning and Lot 1, Block 3 is seeking RM – Multi-family Residential with a restriction to four units per acre (8 dwelling units max based on acreage of Lot 1, Block 3).

Numerous meetings were held with Mr. Renner or his surveyors/engineers to understand their intention for the property as far as precise use and timing of the proposed development. At this time, Mr. Renner has no plans to further develop the properties other than Lot 3, Block 1. Lot 1, Block 1; Lot 1, Block 2; and Lot 1, Block 3 would likely be listed for sale and developed at a future time.

The development proposed aligns with the plan for the city. While the areas designated commercial on the proposed development do not overlay precisely with the future land use it should be understood that the plan designations are appropriate in very close proximity and some adjustment is warranted.

However, adjacent property uses must be considered to ensure that harmonious development occurs and that any commercial development is not too intrusive to the preexisting residential subdivisions in the vicinity. CA – Neighborhood Commercial District is very permissive and without additional restrictions could result in neighbors being negatively impacted by any certain commercial uses.

To ensure a harmonious commercial development with the adjacent residential development a list of recommended zoning restrictions for each lot either by request of the applicant or by staff is provided in Exhibit 6.

Case in point, several letters were received from adjacent property owners concerned about the development and its impact on property values and changes to character to the area. These can be found in Exhibit 4.

Staff does believe the restricted uses outlined in Exhibit 6 for each lot will address many of the concerns from property owners.

Several external agency and internal department comments were received. They are included in Exhibit 5.

Engineering and Planning have included a list of zoning restrictions and desire a development agreement to outline infrastructure improvements (See Exhibit 6).

John is recommending restricting Lot 1, Block 1 to residential uses and the office/bank use group (ex. - insurance, real estate). They asked for CA Commercial for proposed shop condos where they can have their landscaping business and rent out the remaining shops. They would like to rent out the shops to small businesses like electricians, plumbers, roofers, carpenters, etc.

If approved, John would like to construct a development agreement to specifically outline when infrastructure improvements go in. That would include the roadway that bisects the north and south half, 16th St. SE and “Future Street”. In meeting with the engineers and applicants they discussed having 16th St. SE extended and create an approach onto 1806. The existing approach on Lot 2, Block 1, accessing 1806 would be vacated. Ms. Dykshoorn has an approach that just serves her dwelling. She does not want to give this up. When there is a transfer of ownership of her property in the future, that is when the approach could be vacated. She wants to reside there until she can’t anymore. For the sake of optimizing 1806, just reducing the number of approaches and using the same one for all this property. With the transfer of ownership of Lot 2, Block 1, then 16th St. SE shall be constructed within 12 months and the alternative approaches will be utilized.

No certificates of occupancy shall be granted for Lots 1, Block 2 or Lot 1, Block 3 until “Future Street” is constructed. It probably will not be called “Future Street” like it is currently labeled. These lots will have access off of “Future Street”. The water line would be installed and looped through at the time of “Future Street” construction.

Some restrictions to the zoning may be appropriate given the proximity to the neighboring properties.

MDU does want a 10 foot easement and John will discuss the 1806 easement with the DOT. The plans have been sent to them, but he has not heard anything from them.

The Living Water Church dedicated ½ of “Future Street”. Their lot is zoned R7 Residential and is owned by a different owner and it is not part of this proposal. Churches are permitted in residential. That lot is already annexed into the city.

B. Open public discussion.

Greg Feser, Engineering for Val Renner, Applicant:

Commissioner Frank asks what the intention is for Lot 2, Block 1. The applicant wants to leave that as a single-family home. When Lot 1, Block 2 is sold that will be the driver to construct 16th Street. Shops will be on Lot 3, Block 1. The owner is ok with whatever the commission decides for Lot 1, Block 3. She asks for clarification:

Lot 2, Block 1, same thing. It is Ms. Dykshoorn’s current residence. She does not want to do anything with it at this time. It does have a commercial history, when it was a greenhouse that was there. There is an approach that serves her property only.

Lot 3, Block 1, is the lot Mr. Renner wants to build shop condos on. Again allowing the small business uses allowed in the office/bank use group.

Lot 1, Block 2, would be furthest away from the residential subdivision to the west. He listed the Service Group A uses that would be appropriate.

Lot 1, Block 3, not to exceed 4 units per acre, which was requested by the applicant. The adjacent property owners stated they would prefer to see single-family dwellings, not two-family or multi-family.

Lot 3, Block 1, shall utilize the existing approach on south 1806 until 16th St. SE is constructed.

Tim Tausend, 1712 14th Ave SE, “I’m one of eight property owners that is behind the potential property being talked about as R7. That would be my backyard. When I look at this map, I look at two pieces, I look at anything south of 16th as being zoned as R7. If you look at the map, the Dykshoorn house, the existing house is zoned R7. We’re talking about commercial property in the middle of R7. We’re talking about when Ms. Dykshoorn decides to sell her home, whenever that may happen, somebody wants to move into that and be R7 again. Again, there will be commercial property in the middle of a bunch of R7 homes. You look across the highway, that’s all R7 as well. It’s totally surrounded. One area I think is considered essentially commercial, is about two blocks north of the Dyshoorn property and it’s a storage unit. That whole Plainview area, there aren’t any commercial properties that I am aware of. So, I’d like to see this whole area zoned R7.”

Val Renner shows another drawing showing Ms. Dykshoorn’s access. It is 12’ wide. It is tight for a fire truck. How do you make this correct? John wants to take it out. You have to take a bunch of trees out and if the DOT says you can’t have that access anymore why does

she have to lose her approach she has had for many many years because the city wants 16th Street in? John says he would leave that access for Ms. Dykshoorn's property at this time, while she resides there. If the shop condos are approved, there would not be a change to her approach. An access easement across the lot would serve the shop condos. An access easement across commercial property is not uncommon.

Commissioner Laber took part in the comp plan and always thought there would be a large church there. What is being presented is not what her vision was.

Mayor Helbling always thought commercial was planned for along 1806. It seems like commercial would be a common use along there. He thinks it fits into the plan as he remembers. The commercial should be buffered with multi-family, two-family, then single-family. A convenience store could go on that corner of 1806 and 19th someday.

Wade Meschke, 1810 14th Avenue SE, "We are currently adjacent to Lot 1, Block 3. Where the proposed zoning would be twin homes, possibly. Got to go back to what Commissioner Frank said about the buyer knowing what their moving next to. Right now it's a very desirable place to live and to double the number of families behind us, to be a transition for that commercial was not an option for us. Commissioner Laber also never dreamed this would be a commercial area. Like Tim had said, my concern is more south of south 16th Street. Right now you have R7 to the west of Lot 1, Block 3. You're surrounding a lot of R7's with different areas of commercial."

Del Nardello, 1912 14th Ave SE, "When I bought my home I felt very fortunate to live where I do. I didn't expect it to stay the way it is now forever, but, however, I do not want it to be commercial. I want that to be residential. Commercial will devalue my home. That's a residential area."

Violet Warner, 1308 16th St. SE, "I don't want any commercial at the end of that street. It will lead to one thing to another. More street fixing, more turning lanes. We have children in the area. Small children and we don't want trucks or businesses. It was built as homes when I purchased my home there. We're going to get in our vehicles and drive to somewhere, we can drive a little bit further. Keep the homes ... a home area safe."

C. Close public discussion.

D. Commission's action.

Commissioner Renner removes himself from the vote, being the applicant is a relative.

Commissioner Leingang motions to deny the preliminary plat, zone change and annexation. Commissioner Knoll seconds. Upon vote, the motion fails with the following vote: Klein-nay, Knoll-aye, Helbling-nay, Leingang-aye, Laber-nay, Liepitz-aye, Frank-nay, Camisa-nay, Robinson-nay

Commissioner Frank motions to approve the preliminary plat, zone change and annexation as presented subject to the zoning restrictions and a development agreement timing out the infrastructure improvements as outlined in Exhibit 6 with the change that Lot 1, Block 3, be R3.2 and under the development agreement provisions the construction of 16th Street will time with the sale of Lot 1, Block 2. The necessary right-of-way dedications for 16th SE and

“Future Street” and dedications for south 1806, per the NDDOT and a 10’ utility easement on south 1806. Commissioner Camisa seconds. The motion passes with the following vote: Klein-aye, Knoll-nay, Helbling-aye, Leingang-nay, Laber-nay, Liepitz-nay, Frank-aye, Camisa-aye, Robinson-aye.

2. Consider an ordinance of the Mandan Municipal Code enacting guidelines and regulations regarding murals.

A. Staff report.

The mural ordinance is currently in-process of being re-written to reflect suggested changes by Attorney Brown. He will present this at the Mandan Architectural Review Commission tomorrow.

Commissioner Klein leaves at 7:21 p.m.

Engineering and Planning recommend tabling the mural ordinance to the May Planning and Zoning Commission meeting date.

B. Open public discussion.

Susan Beehler, resident, “I would like to state some opinions on the proposed ordinance. I don’t know what’s proposed, but one of the things I would like to see included are that the murals are not restricted to the downtown area and also as a resident I have an idea...it was going to face my inside yard, I was going to put a mural on a section of my fence, or thinking about doing it. I wanted to know if that would be a permitted things allowed and is it something I have to go in front of the city for. Today, you know its clean-up/fix-it week, I was going through some things and I found an article from June 2005 and it shows the owl that is painted on the time rental place and that was a mural. That started a lot of controversy...that owl and also what was on the golden comb, on the side of the building. One thing I would really like to see is the city support the arts and allow a little freedom with what we’re doing. I was disappointed to see the controversy that came up with the mural that’s at Lonesome Dove and the one that is downtown. The one that is downtown that has been told they have to paint over, what I find kind of appalling is those two sidewalks that are by that business place are not in compliance with handicap accessibility. That sidewalk, if you have a truck or trucks parked up over those sidewalks that blocks people from accessing that sidewalk with a wheelchair because of those basements that have not been filled in. In Bismarck, that basement...those steps that go into the lower part of those buildings, with the handicap disability act, they took and had those covered, in Bismarck. In Mandan, we have never required that disability access that I feel is out of compliance and as a planning & zoning board I find it ironic that we are quibbling over a painting on that same street and yet we’re denying people access to travel if they’re in a wheelchair or even a mom with a stroller. I don’t know if you ever walked down the street with a couple of big pickups there hanging over that sidewalk, it’s difficult to walk on that street. I would like whatever the commission’s going to decide this to be cognizant of restrictions on something that I feel is trivial in the grand scheme of serving our businesses and residences. I would like the area to be more open and less restrictive. Not having this where we’re telling people to cover up paintings. This owl that was painted on the time rental building, it says it was painted by an artist out of Tennessee. What is neat about the murals we have at Bearscat is that was done

by a local artist. I would like to see arts supported and laws and regulations made so that it's easy for people to have art in our city.”

C. Close public discussion.

D. Commission's action.

Commissioner Frank motions to table the public hearing on Murals until the May meeting. Commissioner Labor seconds. Upon vote, the motion passes unanimously.

3. Consider Ordinance No. 1301 to amend and re-enact portions of Subpart B – Land Development and Public Services of the Mandan Municipal Code related to Telecommunications Facilities (Small Cells).

A. Staff report

John says his staff report has not changed much from a couple months ago.

The telecommunications ordinance surrounds small cell (5G) attachments to city-owned infrastructure within the right-of-way. It also adds a special use permit requirement to traditional towers exceeding 120' in height.

Due to the length of the ordinance, a **green highlighted** summary is provided outlining the basic elements that each section addresses (See the proposed ordinance in Exhibit 1).

5G Telecommunication facilities:

The City of Mandan was approached several months ago with regard to placement of infrastructure necessary to provide customers with 5G wireless service. The infrastructure is known as “small cell” technology, which is much smaller than a traditional cellular tower. They are small enough to be attached to other infrastructure that is typically located within the public right-of-way, such as street or traffic light poles, larger street signs, etc. They service a much smaller geography and therefore require a higher concentration than a standard tower.

This ordinance outlines the requirements that must be met in order for a small cell to be placed within the public right-of-way, as well as within each zoning district. The ordinance provides standards for small cells attached to existing poles within the right-of-way, city-owned buildings, and privately owned buildings. Fees and process are established by reference to the Wireless Facilities Guidelines (See Exhibit 2). The fees were selected based on what is deemed reasonable by the Federal Communications Commission (FCC). The fees are permitted to be higher, although any amount selected needs to be justified. At this time, the fees shown in the Wireless Facilities Guidelines appear to be reasonable.

Staff, including Principal Planner John Van Dyke, Engineering and Planning Director Justin Froseth, Public Works Director Mitch Bitz, City Administrator Jim Neubauer, and City Attorney Brown met to discuss the creation of the ordinance and associated guidelines. The ordinance is largely borrowed from City of Bismarck, ND, with a few necessary modifications in order to embed within City of Mandan code.

The modifications also include changes following review and comment by Verizon Wireless staff and Commissioner Laber.

Other telecommunication:

While working through the ordinance changes related to telecommunications, limitations to the height of telecommunication transmissions towers has also been added. Presently, telecommunications transmission towers are exempt from height limitations and in some districts do not require a conditional use permit. This opens the door to the erection of these structures adjacent to residential development with limitless height. The proposed changes would require towers exceeding one-hundred-twenty (120) feet to obtain a conditional use permit. The height of one-hundred-twenty feet was determined based on several in Mandan today and ordinances in other communities.

Engineering and Planning believe this will establish a firm foundation to process these applications and facilitate this technology in the best interest of the residents of the City of Mandan.

In case a pole is damaged and who pays for repairs, Section 8 on page 10 of this ordinance states the carrier and the city will work together to replace the pole and restore the wireless communication facility. The carrier shall be responsible for costs incurred by the repair or reinstallation of the wireless core structure. The MAA (Master Attachment Agreement) will go into more detail and outline a lot of specifics.

B. Open public discussion.

Mayor Helbling asks if Bismarck has passed a similar ordinance. John says yes. This ordinance closely resembles Bismarck's and Fargo's.

Chair Robinson asks John if he has communicated with other cities that have had this installed for a while. John says he attended a presentation at the League of Cities last fall. The FCC has limited city's ability to control this. He thinks this ordinance covers it pretty well.

C. Close public discussion.

D. Commission's action.

Commissioner Laber motions to approve Ordinance No. 1301 as presented. Commissioner Frank seconds. Upon vote, the motion passes unanimously.

Commissioner Renner motions to adjourn. Commissioner Frank seconds. Motion passes unanimously.

Meeting adjourns at 7:38 p.m.