

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, April 24, 2023

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on Monday, April 24, 2023, at 5:30 p.m. CST. City Hall will be open for this meeting. If you would prefer to appear via video or audio link, please provide your contact information to andrew.stromme@cityofmandan.com. Planning & Zoning Commission members may be attending this meeting remotely.

ROLL CALL

Chair Robinson called the meeting to order.

Commissioners Present: Leingang, Huber, Helbling, Horn, Gardner, McLean, Smith, Hammond, Robinson, and Buchmiller. Commissioners Absent: Mehlhoff and Liepitz.

MINUTES

Commissioner Smith motioned to approve the March 27, 2023 minutes as presented. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from VE Land Company, LLC, for a final plat to be named Cove at Lakewood. Said property is Lakewood 9th Second Replat of Lot 1, Block 4 in Section 1, Township 138N, Range 81W, City of Mandan, Morton County, North Dakota. The property is located at 3907 21st Street SE.

A. Staff Report

City Principal Planner Stromme presented.

Project Description

VE Land Company requested approval of a final plat for a subdivision to be titled Cove at Lakewood. The property is located in southeast Mandan, west of 40th Avenue SE on the south side of 21st Street SE. A storm pond was built on the property in 2016. The plat is to realign commercial lines in order for development to occur.

Project Overview

The applicant seeks to replat the property from four lots to three in order to facilitate a commercial development. This request is related to a previously approved subdivision plat (Lakewood 9th Second Replat of Lot 1, Block 4) and the PUD - Planned Unit Development Ordinance (Ord. 1355) that were granted in 2020 for this property. Included in the scope of this project is the filling in of an oversized storm water pond / amenity feature that was initially constructed in 2016.

Final Plat

The final plat is comprised of 10.83 acres and contains three (3) lots in one block. Easements are shown to facilitate access, maintenance and utilities. Two of the lots will be developable and are a total 5.28 acres in size. The remaining lot consisting of 5.55 acres and will remain a storm water pond amenity feature for the storm water ordinance.

Approved Preliminary Plat and PUD Amendment

The Planning and Zoning Commission considered this request at the February 27, 2023 Meeting and recommended approval. The City Commission approved the preliminary plat and PUD (Planned Unit Development) amendment at the March 21, 2023 meeting. The land uses permitted to take place on this property, as part of this development, are as follows:

- Multi-family
- Retail group A
- Office-bank group
- Service group A
- Service group B
- Health-medical group
- Education group

Adjacent Properties Use, Zoning and Future Land Use

Adjacent properties include multi-use shops, low-density residential and high-density residential. Adjacent properties are zoned PUD – Planned Unit Development and CB – Commercial. The Land Use Plan designation is Industrial. The proposed development, while not industrial in nature, is in alignment with adjoining uses. Industrial development would not be supported by city staff due to impacts to adjoining properties.

Findings of Fact

Final Plat

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary plat for the proposed subdivision that was approved by the Planning and Zoning Commission;
3. The proposed subdivision generally conforms with the Future Land Use Plan and other plans and studies;
4. The proposed subdivision is not located in the Special Flood Hazard Area or an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development;
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
6. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
7. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

Agency & Other Department Comments

- The proposed site plan and building designs are subject to Mandan Architecture Review Commission review and approval. Staff will share the approved PUD – Planned Unit Development with the Commission for their awareness.

- The City Building Inspections Department advised the applicant on the steps necessary to develop in accordance with the City Floodplain Development Ordinance which will involve a LOMR-F.
- Staff sent 162 letters regarding this request. Primary concerns from neighbors included questions regarding the size of the storm water pond / amenity feature, traffic and parking concerns on 21st Street SE and noise associated with the animal rescue.

Engineering & Planning Staff Comments

This subdivision is subject to a Development Agreement between the City of Mandan and Developer, to be recorded at Morton County. Sidewalks and Boulevard Trees will be required along 21st Street SE. Lot 3, Block 1 (storm water lot) will need to be held in undivided interest by the developable lots in this subdivision plat.

Planner Stromme stated that the Planning Department recommended approval of the final plat for Cove at Lakewood.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request.

Landon Niemiller, Swenson & Hagen, for VE Land Development stated that this concept of the PUD was approved previously. The request tonight is to change some lot lines. There is an existing lot line on the current Lot 2 split into two different lots and with that process there were some set back issues where there is a lot line right down the middle of the development that the contractor is trying to remove. When that line is removed, the south line of all these lots would be moved to the south out of the way, so issues with setbacks are avoided for fire code, etc. Other than that minor request there are no other changes from the PUD.

Chair Robinson inquired if there were any comments or questions.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Huber motioned to recommend approval of the final plat to be named Cove at Lakewood. Commissioner Smith seconded the motion. Upon vote, the motion passed unanimously.

2. A request from Missouri Valley Development for consideration of a Special Use Permit for shop condos. Said property is Lot 3, Block 1, Riverwood Commercial Park 3rd

Addition in Section 26, Township 139N, Range 81W in City of Mandan, Morton County, North Dakota. The property is addressed 201 Riverwood Ave SE.

A. Staff Report

City Principal Planner Stromme presented.

Project Description

Missouri Valley Development, LLC requested approval of a special use permit for the purpose of constructing multi-use shops or “Shop-Condos” on Lot 3, Block 1, Riverwood Commercial Park 3rd Addition. The property is located in east central Mandan, on the west side of Riverwood Avenue SE between 3rd Street SE and Memorial Highway SE. It is currently developed with one shop having three (3) units.

Project Overview

The applicant has submitted a proposal to develop a vacant portion of the property with multi-use shops referred to as "Shop-Condos". The plan includes the construction of a single building with six shop units. A multi-use shop building was constructed on this property in 2013, prior to the adoption of a special use permitting process for the use. The total number of units on the property would increase from three (3) to nine (9) with this project. A site plan is included as Exhibit 3.

Special Use Permit

Multi-use shops are permitted in this MA zoning district with a Special Use Permit. Minimum standards apply to as codified in section 105-1-5 (k) of the City Code of Ordinances (Exhibit 4) related to multi-use shops. Evaluative standards for Special Use Permits are listed in section 105-1-13 (d) of the City Code of Ordinances and are shown in Exhibit 5.

Adjacent Properties Use, Zoning and Future Land Use

Adjacent properties include MA - Heavy Commercial/Light Industrial, MB - Heavy Commercial/Industrial, CB - Commercial. The Land Use and Transportation Plan identifies this area as industrial. The existing zoning and proposed improvement align with this land use designation.

Agency & Other Department Comments

- The proposed building is subject to Mandan Architecture Review Commission review and approval.
- Due to the proximity of the Lower Heart Levee system, Lower Heart Water Resource District will review building permits, site plans and other activities related to the development of the site. This is required per the City Zoning Code section adopted related to the Lower Heart River Buffer district.

Engineering & Planning Staff Comments

- 16 letters were sent to adjoining property owners notifying of the public hearing for this request. No comments have been received.

- An overhead power easement bisects this lot. The proposed structure does not conflict with the location of this line.
- The property will be hard-surfaced for access and stormwater management.
- Public Works and the Utility Department have reviewed the water service plan. A new line and meter are required for the new building.
- Fire Walls sufficient for Building/Fire code will be installed between each unit.

Engineering & Planning Recommendation

Planner Stromme stated that the Planning Department recommended approval of the Special Use Permit for Multi-use Shops contingent on Lower Heart Water Resource District review and approval of plans.

Chair Robinson inquired if there were any comments or questions.

Commissioner Buchmiller inquired about across the street from where this is proposed – those are existing shops, correct? Planner Stromme stated there are many shop condos on Riverwood Avenue as well as directly across the street.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the audience or calling in to come forward at this time to speak for or against the request.

Abe Ulmer, ILSE, representing Missouri Valley Development came forward and stated that the neighborhood has many multi-shops including storage units on the north side and the south side is a large warehouse shop. There are shop condos to the east. Riverwood Center was approved in 2022 for shop condos special use permit and that's on the corner of Memorial Highway and Riverwood Avenue. He reported that spring field work has been delayed due to the snow on the sites. The site has not yet been 100% designed for storm water, however, that is being worked on.

Commissioner Huber stated that she recalls that special use permits began to be required for these multi-use shops or shop condos, because of not knowing the types of businesses that were going to go into them and for what types of uses for compliance with building code or fire code but also with parking. Exhibit 2 indicates parking is ample on the site. She requested more information in relation to square footage the number of parking spots that will be available? Abe Ulmer stated that with the nine (9) units there are 23 parking spots without using any street parking. A firetruck turnaround or a hammerhead turnaround was put in on the west side of the site because of the 150 ft. into the site wherein anything longer than that requires a fire truck turnaround. There is storage area on the north side of the site where the overhead easement is however it is not showing parking back there. There is access to get back there but it is not showing any parking back there at this time. On a shop condo and it depends on what goes in on the site, however sometimes there is one person parking there and sometimes there are four (4).

Chair Robinson inquired if there were any comments or questions for Planner Stromme.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner McLean motioned to recommend approval of the special use permit as presented for multi-use shops contingent on Lower Heart Water Resource District review and approval of plans. Commissioner Buchmiller seconded the motion. Upon vote, the motion passed unanimously.

3. A request from Steve Kilen for consideration of a Special Use Permit for a childcare facility. Said property is Lots 22-24, Block 48, Mandan Land & Improvement Co's Southside Addition in Section 33, Township 139N, Range 81W in City of Mandan, Morton County, North Dakota. The property is addressed 702 10th Ave SW.

A. Staff Report

City Principal Planner Stromme presented.

Project Description

Steve Kilen requests consideration of a Special Use Permit for a commercial childcare for the conversion of a CA – Commercial zoned duplex residential structure to a commercial childcare facility. The property is located in southwest Mandan, north of the Heart River on the east side of 10th Avenue SW (Highway 6) between 6th and 7th Streets SW near the Legion Baseball Park and municipal golf course in southwest Mandan. The current zoning on the property is CA Commercial and the Land Use Plan would be low density residential to be developed here in the future.

Project Overview

The duplex on the property was constructed in 1969 with the land use prior to that being single-family residential (per historic aerials). The CA – Commercial zoning dates back to previous commercial and light industrial uses historic to Mandan's south side.

Property Information

The property is .24 acres in size and contains one principal structure and two detached accessory buildings. Access is provided to the lot directly from 10th Avenue SW (ND Hwy 6). The applicant intends to use the 2,400 sq. ft. structure for the childcare facility and have a maximum of twelve (12) children.

Proposed Special Use

Child care centers in Mandan require a Special Use Permit with one exception for in-home daycare as a home occupation, which permits up to twelve (12) children anywhere residential uses are permitted provided licensing requirements are met. In commercial districts, day care centers are permitted under the provisions of Section 105-1-5. The

proposed use, as requested and described in additional submittals (Exhibit 2) meets all applicable requirements in the special uses section of the zoning code.

The attached Special Use Permit – DRAFT (Exhibit 6) lists requirements for the day care center that must be met prior to issuance of a certificate of occupancy.

1. Facility must receive state approval.
2. 35 sq. ft. of interior play area must be provided per child.
3. 75 sq. ft. of fenced outdoor play area must be provided per child.
4. Onsite parking shall consist of one space for the manager, each employee, and one per twelve (12) clients.
5. Drop-off and pick-up spaces shall be off-street and separate from parking areas.

Adjacent Properties Use, Zoning and Future Land Use

Adjacent properties include a mix of low-density residential, park land, and a child care facility (West River Head Start). Adjacent zoning includes a mix of CA – Commercial, RM – Residential, R3.2 – Residential and A – Agriculture. The Future Land Use classification is low-density residential.

Agency & Other Department Comments

- Improvements to the building exterior is subject to review by the Mandan Architecture Review Commission.
- Enrollment in excess of twelve (12) children would require fire sprinklers per Fire Code.

Engineering & Planning Staff Comments

- 23 letters were sent to adjoining property owners notifying of the public hearing for this request. No comments have been received.
- Staff requests that signage be non-illuminated due to the residential character of the area. Any proposed building lighting should be designed not to spill on to adjoining properties.
- Boulevard landscaping consisting of two new city-approved trees shall be planted on 10th Ave SE by the applicant.
- Attached to this staff report are citations from adopted plans and studies as well as publications related to childcare in Morton County.
- A copy of an updated license for this location from the State shall be provided to the City prior to the facility opening.

Engineering & Planning Recommendation

Planning Staff recommends approval of the special use permit to permit a childcare facility for twelve (2) children to open at 720 10th Avenue SW (Lots 22-24, Block 48, Southside Addition) contingent upon building, fire and state licensing codes being met prior to the issuance of a certificate of occupancy for the use.

Chair Robinson inquired if there were any comments or questions.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the audience or calling in to come forward at this time to speak for or against the request.

Commissioner Huber inquired about what distinguishes this project as an in-home child care project since it is not associated with a residential dwelling wherein Exhibit 1 indicates a living unit plus daycare. She inquired if the plan changed exclusively to daycare and eliminate the proposal for a living unit? Planner Stromme stated that it would be specific to the use that is taking place but not associated with the daycare facility. It is a mixed-use plan with the understanding they would be separated from each other. Commissioner Huber explained that she questions that is because of the distinction of in-home daycare and a special use permit for a licensed child care facility if the owner and operator were to be seeking any kind of business incentives, they would need to clearly differentiate from any assistance provided for the child care facility as compared to any residential component.

Chair Robinson inquired if there were any comments or questions for Planner Stromme.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Gardner inquired about the pickup and drop off location and if it will be on the side street? Planner Stromme clarified that it will be a side street scenario.

Chair Robinson stated that he is familiar with this property and its location stating that it is an appropriate location for the intended use presented and is set up for a safe drop off.

Commissioner Huber motioned to recommend approval of the special use permit for a child care facility at 702 10th Avenue Southwest, Lots 22 through 24, Block 48 Southside Addition contingent upon building, fire and state licensing codes being met prior to the issuance of a Certificate of Occupancy for the use. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

4. A request from Steve Kilen for consideration of a variance from Section 105-4-2 (b) of the City Code of Ordinances related to the use table of permitted uses in the DF – Downtown Fringe District. Said property is Lots 11-12, Block 62, First Northern Pacific Addition in Section 27, Township 139, Range 81 in City of Mandan, Morton County, North Dakota. The property is addressed 410 3rd Ave NE.

A. Staff Report

City Principal Planner Stromme presented.

Project Description

Steve Kilen requested approval of variance from Section 105-4-2 (b) of the City Code of Ordinances related to the use table of permitted uses in the DF – Downtown Fringe District to allow the development of storage garages on this property. The property is located in central Mandan, north of East Main Street on the east side of 3rd Avenue NE between 4th and 5th Streets NE.

Project Overview

Mr. Kilen submitted an offer to purchase this lot from the City of Mandan in the winter of 2022-2023 with the intent of developing self-storage garages on the property. The purchase was approved by the Board of City Commissioners contingent upon the applicant submitting plans and a variance request to the City of Mandan Planning and Zoning Commission as self-storage uses are not a permitted use in the City's DF – Downtown Fringe District. **Property History** In the late 1800s, the property was originally platted into the First Northern Pacific Addition. However, due to challenging topographical conditions on the land, no development has taken place. Over the years, the city eventually took ownership of the property due to back taxes. In 2019, the city made efforts to list this and other similar lots for sale. Despite various offers being considered, no sale or development has taken place for several reasons. A balance of special assessments exists on the property. One major obstacle for this property is the lack of immediate availability of public utilities, particularly sanitary sewer service, which is necessary for most residential or other water-reliant uses. This limitation has hindered the property's development potential and has been a significant factor in the lack of progress on sale or development efforts by the City. It is believed that scoured land has existed on this property for a significant period of time. It is shown as a feature on 1950 aerial imagery. The origin of this could date to the construction of 3rd Avenue NE.

Intent of DF – Downtown Fringe District and Excerpts

From 2018 Downtown Mandan Subarea Study, the following are taken from the City Code of Ordinances and adopted plans and studies related to downtown fringe development.

Code – Intent of DF District

The purpose of the DF Downtown Fringe District is to strengthen and complement the city's downtown area by allowing uses not normally allowed in the DC Downtown Core District. The Downtown Fringe District also serves to provide a transitional area between the DC Downtown Core District and adjacent commercial and residential zoning districts. The uses allowed in this district usually require larger parcels and a greater emphasis on automobile access and parking.

Plan - Development Recommendations:

The city should consider specific buffer treatments for non-residential uses, in addition to general setbacks, to protect potential adverse effects on residences. These can include evergreen tree plantings, opaque fences, berms, and orienting parking areas away from residential property.

Plan - Policy: Downtown Fringe District

To build on the activity in the downtown core by preserving more residential uses as a transition to areas with differing character and intensity, limiting the density of commercial uses through site coverage and open space requirements. Adjacent Properties Use, Zoning

and Future Land Use All adjacent properties are zoned DF – Downtown Fringe and are developed with low-density residential. The Future Land Use Plan recommends medium-density residential for this portion of Mandan.

Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area or within the DF – Downtown fringe district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Agency & Other Department Comments

The City Building Inspections Department has informed the applicant of building code requirements for development adjacent to steep slopes.

Engineering & Planning Staff Comments

- 9 letters were sent to adjoining property owners notifying of the public hearing for this request. There was one petition-style protest received from a property owner that was forwarded to committee members for consideration.
- At the time of purchase, staff recommended denial due to the use not being permitted by the city code of ordinances.
- The 3rd Avenue NE is collector roadway per NDDOT. Collector roadways are higher-traffic and visibility corridors for the community.
- Staff recommends if the board were to recommend approval of this request to require buffering on the north and south sides of the proposed development with landscaping or an opaque fence. Perennial landscaping consisting of trees and shrubs should be required on this site if developed. A Development Agreement should be recorded against the property binding all future owners for maintenance and upkeep.
- The absence of a comprehensive masterplan for the remaining city lots on the hill poses a significant concern to city staff, as it is expected to have a substantial negative impact on the potential sale of those lots.

Engineering & Planning Recommendation

Planner Stromme stated that the Planning Department recommended review of the request and findings of fact, consideration of the statement of hardship and identification of a hardship, and modifying staff's findings of fact as necessary to support the motion of the Board. The Planning Department is managing the sales of these properties wherein the goal is to try to get rid of the properties. Due to the absence of a master plan for this area it will likely will make it harder to sell the rest of the properties. The property is the one that has had the most offers on it, however, it may have some negativity for the city to off load the rest of the properties. The reason for getting rid of the properties is to accommodate uses that may generate property tax. There is a significant property tax balance on this property that if sold, could be placed onto the buyer. That balance on all the lots is close to \$100,000.

Planner Stromme stated that it is believed that the site plan, included in the packets, would be contingent on a future right of way vacation, which if the sale of the property moves forward, the owner would be entitled to a plat for a right of way vacation and get more property which would allow for the site plan to work better with the properties.

Planner Stromme stated that the Planning Department requests the Planning Commission to review this request with the Findings of Fact provided and to consider the statement of hardship that was submitted by the applicant, and potentially identify the hardship and then modify the Findings of Fact to support the motion. There are recommendations provided to approve or to deny. If there is a recommendation to approve, that the individual that makes that motion identifies a hardship and modifies the Findings of Fact with that motion.

Commissioner Huber requested Planner Stromme to identify the lots in this area that are for sale by number and if he would also comment on the proximity of water and sewer services and what it will take to extend those to serve these lots.

Planner Stromme stated there are five (5) lots the city has for sale in this area. The 1st lot is the one that Mr. Kilen is requesting. The next four (4) were depicted on the city map as one lot is located on 4th and the rest of the lots are located on 3rd. He stated there has been discussion if the buyer were to buy the whole group of lots, he would be entitled to that right of way vacation process which would take an additional 80 ft. x 300 ft. that the city has platted as a right of way for 4th Street NE.

City Engineer Froseth came forward to explain that the challenge for these lots would be getting water and sewer services to this area wherein routing would have to be at least a block's length away for a sewer main. His guestimate is it would cost tens-of-thousands of dollars to get sewer service to this group of properties in this block. Water is more doable, but sewer would be difficult. Commissioner Huber inquired about green-field development wherein some streets in that area were recently done bringing some value to that area? Director Froseth replied that would be somewhat different as this would be considered in-fill within the city, thus, not the same comparable scenario.

Commissioner Smith stated that he observed the area and he wondered what other uses could this lot be utilized for, even though it is undesirable lot for a home. It is an eyesore of property. What other uses would fit within this zoned area? Planner Stromme stated that a number of the lots sold in this area were for residential development for duplex or single family. In 2022 there was an interest in these lots however, they wanted to build before the city could firm up the sale so the deal fell through. There have been discussions to contact the neighbors in that area for input on what they feel the property might be good for, which is a process other cities have used in similar situations. Regarding the zoning, the property would be most supportive of something residential in nature that does not generate a lot of traffic. Commissioner Smith commented that the property being used for garages would be more residential. Planner Stromme stated that one of the mitigation strategies for uses as permitted in the code would be some variation to the street facing façade, probably through the architectural review process if the Board identifies a hardship and modifies the Findings of Fact to support in order to approve would be a condition that when maybe putting on a street façade with variation to match the neighborhood, is something that could be done.

Commissioner McLean inquired about the several offers for this particular lot. What were the problems? Planner Stromme stated that generally the problems hindering sales have been due to utilities. The barrier is, if someone is just going to develop this lot, the cost of utilities to bring in would be prohibitive. However, to the city's side, just to develop this lot will likely result in difficulty reducing other property the city has for sale. There never has been a master plan for what the city would do with the rest of the properties with specials against them. The concern would be having another barrier in how the city would get to that additional redevelopment.

Chair Robinson inquired about the other lots located above, with the amount of erosion, is that land stable enough to develop? Planner Stromme stated that brings up a good question wherein it takes a lot for a city to determine what a development could be in and the city staff do not have answers to all the questions that can come up in situations such as these. Obtaining geotechnical engineering studies are common in areas such as this with erosion. It is a safeguard in some situations, but not an answer he would feel comfortable providing. Commissioner Huber inquired if there could be an approach for the city to request a Request for Proposals for all of these lots simultaneously to request a geotechnical study and a master plan proposal for a development plan for all of them together, or at least state it in a way that makes sense for bringing utilities to them as a whole? Planner Stromme replied it could be something presented to Administration to explore how the city would potentially pay for that or how a developer could pay for it. However, when discussing this matter with the city's realtor, Daren Schmidt from Oaktree Realtors, he has agreed that might be the right strategy. There are a few instances of city lots that have not sold, on 3rd and 4th Avenues, and another group of them on 5th Avenue. It is a commonality across all of these lots that when the railroad came through town, it laid down a plat, and it didn't think through how these streets were going to get built. Planner Stromme stated that a solution for this matter ultimately comes down to capacity and the Planning Department would need some direction for opportunities for technical assistance in order to be allowed to move forward with that approach.

Chair Robinson inquired if there were any further comments or questions for Planner Stromme. Hearing none, at this time he opened the public hearing for comments.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the audience or calling in to come forward at this time to speak for or against the request.

Steve Kilen came forward and stated he is the applicant in this matter. He stated that in his opinion, the lot he is purchasing is the only one he is interested in because the other lots are on side hills. The infrastructure and costs to develop the land would be costly. He confirmed that the plan he submitted is pretty much in its final form.

Chair Robinson said that in the absence of a master plan, he inquired that if the property is not developable, is it even worth pursuing? Planner Stromme stated that typically there is a master plan for the rest of the area, however, there is not one specific to this site. There is a Land Use Plan for the nearby residential areas.

Commissioner Gardner inquired if there would be any fencing or anything around the proposed garages and will there only be one entrance? Mr. Kilen stated there will be one entrance off 3rd Avenue but he did not plan on putting in any fencing. The plan is for a set of garages that will be sided and shingled with double stall garages. There will not be any outside parking because everything will be in the garages. Basically, there will be two small buildings constructed with one concrete driveway. Commissioner Buchmiller inquired if Mr. Kilen obtained sewer and water services and what that cost would be? Mr. Kilen said that Abe Ulmer determined the sewer and water would have to go down 4th Street. An approximate estimate for the water, sewer and redoing the street, is at \$50,000 to \$60,000 plus specials @ \$25,000.

Tom Fetch, came forward and stated he lives to the south of this area. He said he previously attempted to buy this property about 10 years ago and he was told it would be all or nothing because they were concerned about slides, wanting it to be safe to all the homes on the other sides. He wanted to put up garages on is Lot 12, similar to what is being proposed. He was told he could not do that because of how the zoning is and that it would be a waste of his time to do what is being done right now because they wanted it all developed at one time. He said his concern with it being that way for the last 35 years, it will be slides. Other concerns he brought forward included spending money on specials getting those streets re-done. He commented that he would be in favor of putting a duplex there, rather than rental garages.

Chair Robinson inquired if there were any further comments or questions for Planner Stromme.

C. Close Public Hearing

Commissioner Huber commented that the city appreciates Mr. Kilen's interest in city improvements however this project is more of a long-term benefit than the short-term gain of allowing the variance for the storage units and not seeing the hardship unless and until there has been more of an effort for services to these lots as a whole and what the future of this area of land might hold.

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Huber motioned to recommend denial of the variance from Section 105-4-2 (b) of the City Code of Ordinances related to the use table of permitted uses in the DF – Downtown Fringe District due to no hardship being identified. Commissioner Hammond seconded the motion. Roll Call Vote: Leingang-aye, Huber-aye, Horn-nay, Helbling-nay, McLean-nay, Buchmiller-nay, Smith-nay, Hammond-aye, Gardner-nay, Robinson-nay. The motion failed.

Commissioner Gardner stated he understands the reason why the suggestion to not separate the lots out for a single sale, if the city sells the most developable lot, what will that do for the other four lots? Will the city be able to do anything with them? Bundling them together

might be the right thing to do, however, he believes something should be done, however, the city will probably never get the \$100,000 already due on specials. Planner Stromme explained that he does not have a solution or timeline for the city to consider. The city has had these lots for many years and this is not something the city has to move forward or expedited at this time. The general goal of this action is to off-load city property lots wherein his opinion was outlined in the packet materials that without a concept or plan for the rest of the properties.

Commissioner Smith stated that when he viewed the property, his opinion was that the property is underdeveloped and it has been that way for over 100 years. It is clear the reason for that is its topography. It will be economically difficult to develop the land, and it is his opinion that the city should allow for the development, even just a portion of it, and the applicant's plans should be approved to move forward.

Commissioner Huber concurred with the statements provided and that these properties have been underdeveloped for as long as the city has existed but she also thinks there is something unseen and unknown about what the opportunity might be. It is a similar situation that occurred with downtown lots where remediation equipment had been installed and there were challenges to overcome thus the sale price of the property had to be written down in order to get that investment. The investment on those lots is now generating property tax revenue. In addition, properties west of the middle school also generated tax revenue from back taxes. They were put up for RFPs in 2013 and now have thriving businesses in place there. Those were also considered hard to develop properties due to topography.

Commissioner Buchmiller stated that he had challenges with the properties he invested in to work through in order to build on them. In this case being discussed, what the potential growth is, if the city approves the sale of these lots that it will open the window for other builders and contractors to obtain variances for the other lots with potential to build on those.

Chair Robinson stated that he believes that without a master plan for access and services, it will be difficult to develop that lot without knowing where that would track in there. When reviewing the city's documentation, it is clear there are mixed feelings on the properties, in whole, including both positive and negative comments. Commissioner Gardner commented that the current stipulations required by the city, may be outpricing the sale of the lots, noting the \$100,000 for specials and bringing in services that would cost in excess of \$50,000. Commissioner Smith inquired of Mr. Kilen if he would be willing to purchase all the properties? Mr. Kilen replied it would be nearly impossible to do anything with the other lots. In particular, the hill could not be moved because of the houses located up above due to erosion and hill slides. Planner Stromme stated that in the summer of 2022, there was a presentation to the City Commissioners wherein that concern was outlined, wherein it would have caused cutting out the whole hill.

Mayor Helbling commented that this is a very unique property and it is his opinion there could not be anything worse than the way the city has maintained it over the last 15-20 years. There has been very little maintenance done there and it is overgrown with weeds. When Mr. Fetch commented earlier, he stated that when he tried to purchase the property years ago to do this same thing, his request was denied. Why, when it was okay to do that many years ago - why would it not be the same thing, today? It is a very unique property and it is one

chance to finally do something with the property. He does not see a master plan coming in the future or the city willing to spend money for a master plan and advertise these properties any differently than they are today. He stated he believes this is an opportunity worth pursuing and that there is a hardship, however, it is not something that should be done city-wide, however this is one area that the city should make an exception and try to clean this up.

Chair Robinson stated that without a Geotech study on this, it is difficult to speak positive of those lots there, as far as future use. Commissioner Buchmiller inquired about these being garages instead of residential homes, is there still a taxable amount on the property when a building is constructed wherein the city will receive taxes? Planner Stromme stated that structures built on the property would be considered an improvement that would likely have some value and generate some property tax. Further, that may have some factors weighed into it such as the availability of utilities and the limitations of the properties that will answer questions as to whether it will increase the value. They will be commercial zoned lots.

Commissioner Gardner motioned to recommend approval of the variance for Section 105-4-2 (b) of the City Code of Ordinances related to the use table of permitted uses in the DF – Downtown Fringe District request for variance due to the following hardship of utilities access and to modify the staff Findings of Fact.

Commissioner Buchmiller seconded the motion.

Commissioner Gardner moved to approve a First Amended Motion to include modifying No. 1 of the Findings of Fact from a negative to a positive wherein there is a need for a variance is based on special circumstances unique to the specific parcel of land involved, not generally applicable to other properties in this area within the Downtown Fringe District, due to lack of infrastructure and topography.

Commissioner Buchmiller seconded the First Amended Motion.

Chair Robinson asked if everyone understood the amended motion and the Findings of Fact?

Commissioner Buchmiller inquired if the motion is approved - will the structure of the garages be contingent on the motion as residential type of construction? Will city staff and/or the Building Official address that part?

Planner Stromme replied that if there is a condition of approval of the motion as stated, it would be recommended that be included in the motion. Subsequently the recommendation would be presented to the City Commission for consideration and the commercial structure would be addressed by the Architectural Review Committee (MARC) for things such as storm water final review of what the project would look like. Ultimately if P & Z wants to place a condition on the property.

Commissioner Gardner inquired if the motion should include the property be zoned residential? Planner Stromme replied his recommendation would be to approve the plan as presented with the addition of some widows for architectural variation or articulation of the Third Avenue Street side, proposed as residential.

Chair Robinson clarified that it would be a residential conceptual design that the applicant presented to the P & Z Commission.

Commissioner Gardner moved to approve a Second Amended Motion to approve a variance from Section 105-4-2 (b, DF – Downtown Fringe District use table to prevent the variance request due to the hardship of utilities access, topography and the Findings of Fact No 1 which is a need for a variance based on special circumstances or conditions unique to the specific parcel of land involved and that are not generally applicable to other properties in this area within the Downtown Fringe District; also, recommending construction of the proposing the commercial storage facility in line with residential design and structure as presented by the applicant.

Commissioner Buchmiller seconded the Second Amended Motion

Chair Robinson inquired if there were any questions at this time on the motions presented? Hearing none, he called for a Roll Call Vote: Leingang-aye, Huber-nay, Horn-aye, Helbling-aye, McLean-aye, Buchmiller-aye, Smith-aye, Hammond-nay, Gardner-aye, Robinson-aye. The motion passed.

5. A request from the Mandan Progress Organization for consideration of a variance from Sec. 105-4-2 (b) and Sec. 105-1-3 – Incidental uses of the City Code of Ordinances related to the use table of permitted uses in the DC – Downtown Core District and codes related to Incidental Uses – Portable Shipping Containers. Said property is Lot 1, Block 1, BNSF Commercial Park 3rd Addition in Section 27, Township 139, Range 81 in City of Mandan, Morton County, North Dakota. The property is addressed 611 Main Street W (the parking lot west of the Mandan Morton Library).

A. Staff Report

City Principal Planner Stromme presented.

Project Description

The Mandan Progress Organization (MPO) requested approval of a variance from Section 105-4-2(b) – DF – Downtown Fringe Use Table and 105-1-3 (4) (i) – Incidental uses – Portable Storage Containers of the City Code of Ordinances. The property is located at 611 Main Street W (the parking lot west of the Mandan Morton Library).

Project Overview

The applicant seeks to place through fall of 2023 five (5) portable storage containers in the southwest corner of the west parking lot of the Morton Mandan Public Library from March 2023 to November 2023, at which time their temporary storage space will then be available. This is in the Downtown Fringe District. The MPO was notified that the shipping containers were not allowed downtown per the Code of Ordinances. The containers exist on the property as a zoning violation to the codes requested to vary from by the applicant. The containers are used to store displays for the Mandan Holiday Lights on Main. The 2022 Zoning Amendment related to Portable Storage Containers at Section 105-1-3 of the City Code of Ordinances, was adopted in 2022 per the direction of City Department Heads in response to unregulated development of portable storage containers in portions of the

community. At the time of code adoption, it was identified as the best strategy for Mandan to greatly restrict portable storage containers due to issues such as:

- Aesthetics (not meeting standards for Architecture Review)
- Assessing issues (not real estate unless affixed to the ground)
- Access (without a formal review of development plans creating issues knowing how units are accessed)
- Public Safety and Sanitation - unregulated development could create issues with safety, rodent's problems or mold growth problems.

Planner Stromme stated that it was communicated to city staff working on the amendment in 2022 that concerns such as impacts to property values were issues adjoining property owners have identified or which may increase should storage containers be permitted to develop without strict regulation.

Intent of DF Downtown Fringe District and Excerpts from 2018 Downtown Mandan Subarea Study. The following are taken from the City Code of Ordinances and adopted plans and studies related to downtown fringe development.

Code - Intent of DF District: The purpose of the DF Downtown Fringe District is to strengthen and complement the city's downtown area by allowing uses not normally allowed in the DC Downtown Core District. The Downtown Fringe District also serves to provide a transitional area between the DC Downtown Core District and adjacent commercial and residential zoning districts. The uses allowed in this district usually require larger parcels and a greater emphasis on automobile access and parking. Adjacent Properties Use, Zoning and Future Land Use Adjacent properties include the Mandan Morton Public Library, Downtown Mandan businesses and the BNSF Railway. Adjacent zoning includes DF – Downtown Fringe, DC – Downtown Core, and CB – Commercial. The land use plan identifies this area as a future commercial development in this area.

Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area or within the DF – Downtown fringe district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Engineering & Planning Staff Comments

- ~ 4 letters were sent to adjoining property owners notifying of the public hearing for this request. There have been no comments received.
- ~ The proposed temporary storage until Fall of 2023 would take place on publicly-owned property.
- ~ The code language adopted by the City of Mandan is in alignment with standards in place for cities like Minot and Bismarck. The approval by those City Boards was unanimous.

Engineering & Planning Recommendation

Planning Staff recommended review of the request and findings of fact, consideration of the statement of hardship and identification of a hardship, and modifying staff's Findings of Fact as necessary to support the motion of the board.

Chair Robinson inquired if there were any comments or questions for Planner Stromme.

Commissioner Smith commented that the new ordinance that was passed, is not on-line. He inquired if MPO has made arrangements subsequent to November 2023 to move the containers to other places? They are not seeking a permanent variance? Planner Stromme replied that if this is approved, they are there until the fall of 2023 and that is not aware of any finite location for this. It is possible that the location is an area where the code would permit the storage to take place and therefore no action would be necessary for the Planning Department to be involved. This request would go through the fall of 2023 noting that he has not been notified of the final location after that time.

Commissioner Smith stated he does not believe this is a variance issue rather it deals with a property issue, however, he stated he understands why Planner Stromme took this approach labeling it as a variance, due to the location of it in the code where this particular item was to be addressed. This seems to be more of a code enforcement issue and it should be up to the Code Enforcement Department and the City Commission whether they want to grant a waiver for a certain period of time for them to come into compliance with the ordinance. He suggested the P & Z Commission deny the variance because it does not apply to a variance under the ordinance code. If the Commission wants to extend the time for them to come into compliance, they have the authority to do that.

Chair Robinson suggested that if it will be long-term, there needs to be a solution to what their needs are and what will be done. He inquired if when these containers were put up, if they thought what the backend would be as related to storage?

Commissioner Huber stated she agrees with the approach recommended by Commissioner Smith as she also has concerns for a variance for this particular request. She is not clear if the Commission were to address it as a different parcel of property if its storage containers would be viewed as being appropriate. To change that is in the Zoning Code is not something that she would support. If this is deemed as being something more of a temporary waiver of the ordinance for giving more time to comply to Code Enforcement and the City Commission, she would support that approach.

Commissioner Gardner indicated he concurs with Commissioner Huber and if this Committee can do something to help move this along and make it a temporary solution, he would agree to that.

Chair Robinson inquired if there were any comments or questions for Planner Stromme.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the audience or calling in to come forward at this time to speak for or against the request from the Mandan Progress Organization for consideration of a variance from Sec. 105-4-2 (b) and Sec. 105-1-3 – Incidental uses of the City Code of Ordinances related to the use table of permitted uses in the DC – Downtown Core District and codes related to Incidental Uses – Portable Shipping Containers.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson said in regards to the comments receive, if the approval is to deny, that recommendation can be made at this time.

Commissioner Smith moved to recommend denial of the variance of a variance from Section 105-4-2(b) – DF – Downtown Fringe Use Table and 105-1-3 (4) (i) – Incidental uses of the City Code of Ordinances related to the use table of permitted uses in the DC – Downtown Core District and codes related to Incidental Uses – Portable Shipping Containers identified; further, moved that the P & Z Commission defer to the City Commission and suggest they consider granting a temporary waiver through November 2023 of enforcement of this section.

Commissioner McLean seconded the motion.

Commissioner Huber offered a recommendation if it would be appropriate that the directive in the motion go to Code Enforcement Board of Appeals or the City Commission. Commissioner Smith recommended that Code Enforcement should start with the Code Enforcement Officer and then it would go to the Board with the final appeal going to the City Commission. That route would be appropriate; however, he believes the City Commission has the jurisdictional authority to address the matter up front. Commissioner Huber commented that she is not clear if it is for the P & Z Commission to decide that, clarifying that she did not want to give strict details of how it should be addressed, citing a previous similar issue with murals in downtown.

Planner Stromme stated that a suggested motion would be to forward this to the Code Enforcement Department and they will take it through the proper channels.

Commissioner Smith amended the motion to state that original motion will state that this matter will be deferred to the Code Enforcement Department for resolution for a waiver for the period of time suggested of November 2023. Commissioner McLean seconded the amended motion. Upon vote, the motion passed unanimously.

OTHER BUSINESS

1. *Update on active plans and studies.*

Planner Stromme reported on studies of interest to this Commission related to long-range planning:

(a) Sunset Drive Corridor Study. A recommendation has been presented for two 3-lane alternatives, south and north of the interstate to manage projected traffic and safety improvement needs with an alternative the city will have in the future when a reconstruction is warranted. This is a project being worked on with the Bismarck-Mandan Metropolitan Organization.

(b) Sunset Drive Interchange Study. The NDDOT Bismarck District website provides designs that are being recommended. Of note, three of the four following examples would be one of the first of its kind in North Dakota. Four different scenarios were presented for various areas in or around Mandan. The public will be involved in the planning stages in the future. There is a comment form available on the website.

(c) Mandan High School Placemaking Plan. A public input meeting was held on March 28, 2023 of which 60 plus individuals attended. This is the next phase of the market analysis that are supportive of neighborhood uses and recreative uses. Further information can be found on the website. The timeline of the project was reviewed showing the various steps moving forward. There is a survey available on line for anyone interested in participating and the results of that survey will assist the city staff with the building plans.

(d) Zoning Ordinance RFQ. There is work in progress to update the city's zoning ordinances to assist the new developments being planned for Mandan.

Planner Stromme encouraged Planning and Zoning Commission members and the public to provide input for each of the projects. Commissioner Huber inquired what the deadlines are for the projects?

Planner Stromme provided the final input dates for public comment to be:

- (1) Sunset Drive Corridor Study: May 5, 2023.
- (2) Sunset Drive Interchange Study: May 5, 2023.
- (3) Mandan High School Placemaking Plan: Survey is open through May 16, 2023 however that is not the end date of the public input. There will be more opportunities for the public to provide comments.

The links to all the projects have been and will continue to be available on the city's website and other social media platforms.

ADJOURNMENT

There being no further business to discuss or come before the Board, Commissioner McLean motioned to adjourn the meeting. Commissioner Hammond seconded the motion. Upon vote, the motion passed unanimously.

The meeting adjourned at 7:24 p.m.