

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

The Planning and Zoning Commission of Mandan met in session in the Commission Meeting Room of the Mandan City Hall on Monday, July 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, McLean, Buchmiller, Smith, Hammond, Robinson. Commissioners Absent: Mehlhoff, Liepitz, Gardner.

MINUTES

Commissioner McLean motioned to approve the June 26, 2023 minutes as presented. Commissioner Smith seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Mandan School District #1 for a Preliminary Plat and Zone Change from A – Agriculture to CC – Commercial with restrictions for a subdivision to be titled Heck 2nd Addition. Said property is Lots 4 & 5, Block 3, Heck Addition and Auditor’s Lot C in the NW ¼ of Section 22, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota.

A. Staff Report

City Principal Planner Stromme presented.

Mandan School District #1 requested consideration of a preliminary plat for a subdivision to be titled Heck Second Addition and a zone change from the A – Agriculture district to CC – Commercial restricted. The property is located in north central Mandan, north of Old Red Trail and west of ND Hwy 1806 in the area of the new Mandan High School development.

Overview of Request

The proposed preliminary plat would modify the property lines of Heck Addition and Auditors Lot C, resulting in the formation of two reconfigured platted parcels for future commercial development. The proposed zone change seeks to include an area that was previously not part of Heck Addition into zoning consistent with the rest of the Mandan High School and associated commercial lot development.

Proposed Preliminary Plat

The proposed plat covers a total of 5.29 acres and comprises two lots within a single block.

Lot 1, Block 1, is 1.69 acres in size, while Lot 2 occupies the remaining 3.60 acres. The plat includes easements to facilitate access to the lots and for utility installation and other public utilities. There is a 30-foot access and utility easement connecting Auditor's Lot E to 4th Avenue NW. A previous residential lot indicates part of it going into Lot 2 and part of it goes into Lot 1 wherein the plan is to develop and sell it by the School District for private development. The previous lot line of Auditor Lot C is depicted by a dotted pattern on the map. There are a number of easements including utility easements including a sanitary sewer easement and access easements for utilities to Auditor's Lot E which is beyond the subdivision, however, there is an understanding between the City of Mandan and the DOT and the developer that access to HWY 1806 is not going to be granted to the subdivision based on the functional classification of the highway, in particular, the round-a-bout. That easement is reserved for a point in time where the remaining homes northwest of the round-a-bout is developed that will need access to Hwy 1806. Consistent with the Heck Addition Development plan, non-access lines will be placed on the east property line of Lot 2. This is necessary because direct access to ND Hwy 1806 is not feasible in this location.

Zone Change

The proposed zone change aims to reclassify former Auditor's Lot C, which was previously excluded from the larger Heck Addition development in 2021 due to separate ownership. Since that time, the Mandan School District #1 has acquired ownership of the lot. The new zoning designation for this lot would be CC – Commercial restricted zoning district. An overview of the permitted uses for the property under this zoning designation was provided (Exhibit 4).

Adjacent Properties Zoning, Land Use and Future Land Use

Adjacent properties are zoned CC – Commercial restricted, CB – Commercial, A – Agriculture and Industrial – Morton County. Uses include rural residential to the immediate north, undeveloped commercial land to the north and west, a telecommunications tower to the west, a petroleum trucking facility to the south across Old Red Trail NW, and the refinery to the east across ND Hwy 1806. The Future Land Use Plan identifies this property as commercial.

Findings of Fact

Preliminary Plat

1. All technical requirements for consideration of a preliminary plat have been met;
2. The proposed plat generally conforms to the 2014 Fringe Area Road Master Plan;
3. Due to roadway improvements associated with this subdivision and recent infrastructure improvements to ND Hwy 1806 and Old Red Trail, the proposed subdivision would not have substantial effects on the safety and circulation of public roadways in the vicinity, and therefore no traffic impact study is required;
4. The proposed plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision;
5. The City of Mandan and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the proposed subdivision at the time of development;
6. The proposed subdivision is not located in the Special Flood Hazard Area, an area where the proposed developer would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development;

7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
8. The proposed subdivision is consistent with the Comprehensive Plan, other plans and studies, policies and accepted planning practice; and an amendment to the Future Land Use Plan is underway, and;
9. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Zone Change

1. The City of Mandan and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by this zone change;
2. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
3. The proposed zoning change is consistent with the Future Land Use Plan, other adopted plans and policies, and accepted planning practice;
4. The proposed zoning change is compatible with adjacent zoning;
5. The proposed zoning change would not adversely affect public health, safety and general welfare.

Agency & Other Department Comments

- ~ Nine (9) letters were sent to adjacent property owners and no comments have been received.
- ~ MDU has reviewed and supports the easements depicted for their utility.

Engineering & Planning Staff Comments

- ~ A Development Agreement exists for the Heck Addition subdivision. Staff is considering ways to extend that document to this replat and any future replats.

Engineering & Planning Recommendation

Planner Stromme stated that the Planning Staff recommended approval of the preliminary plat for Heck Second Addition and zone change from Ag – Agriculture to CC – Commercial restricted.

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

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 from Mandan School District #1 for a Preliminary Plat and Zone Change from A – Agriculture to CC – Commercial with restrictions for a subdivision to be titled Heck 2nd Addition.

Abe Ulmer, Independent Land Surveying & Engineering (ILSE) came forward and stated that ILSE is contracted to complete the plat for the Mandan School District. He stated he is available to answer any questions regarding the project. He stated that the Mandan School District has been in contact with the property owners to accomplish moving forward with this project with regard to the lots the school intends to sell.

A second invitation was given to come forward at this time to speak for or against this project.

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 inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Commissioner Smith motioned to recommend approval of the preliminary plat of Heck Second Addition and a zone change from AG – Agriculture to CC – Commercial restricted. Commissioner Buchmiller seconded the motion. Upon vote, the motion passed unanimously.

2. A request from Alex and Abby Froelich for consideration of a variance to Section 105-3-5 (e) (2) of the City Code of Ordinances related to the R7 – Residential district side yard setback. Said property is Lot 2, Block 1, Emberland West Addition in Section 35, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota.

A. Staff Report

City Principal Planner Stromme presented.

Alex and Abby Froelich requested consideration of a variance from Section 105-3-5 (e) (2) of the City Code of Ordinances related to the R7 – Residential district side yard setback. The property is located in south central Mandan, east of 8th Avenue SE, north of 19th Street SE on the west side of 12th Avenue SE.

Project Overview

The proposed request seeks to deviate from the side yard setback requirement stated in Section 105-3-5 (e) (2) of the City Code of Ordinances. This variance was requested to facilitate the reconstruction of an attached garage, which would slightly encroach into the required side yard setback for R7 – Residential zoning, which is 6 (six) feet. The applicants are requesting to extend their garage and it will require the side yard to be reduced. The estimated projection of the reconstructed garage into the setback is ten (10) inches, leaving a remaining clearance of five feet, two inches (5’2”) between the structure and the side lot line. The precise measurements will be confirmed by a registered land surveyor, and the verification process is currently pending. The City Commission will require the surveyor's report if the request progresses with a recommendation for approval.

Property History

The existing home was constructed in 1975 and the total square footage of structures on the property is 1,970sf. There are some structural issues to be addressed. A new double-stall garage will be built with a foundation that will require the additional 14 inches. The current garage has a measurement that is closer to the lot line in one corner and further away in

another corner. The applicants are proposing construction to fit the setback in one corner and encroach in another corner. This home was built prior to the platting of Emberland Subdivision and the new lot lines came after the structure was originally built. A survey was requested by the city be drawn up that would confirm where some of the features are in relation to the side yard lot line. They survey report is showing that the current garage is six (6) feet from the lot line. By adjusting the site plan that was provided by the applicant to the measurement that is taken by the surveyor stated that the garage would be 5 ft. 2 in. from the lot line should be adjusted downwards to 4 ft. 10 in. from the lot line and that would represent the dimension shift.

Variance Request

The requested variance would permit the reconstruction of an attached garage which, according to the site plan submitted by the applicant would be located five feet, two inches (5' 2") from the side lot line. A statement of hardship submitted by the applicant (Exhibit 2).

Findings of Fact

Variance

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 R7 – Residential 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 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

~ Nineteen (19) letters were sent to adjacent property owners and no comments have been received.

Engineering & Planning Recommendation

Planner Stromme stated that the 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 and in particular, determine at least one finding of fact to support the motion. The applicants were available to answer questions regarding this project.

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

Commissioner McLean inquired if there would there be an impact to the back corner? Planner Stromme stated that by taking the 14-inch adjustment down it would fall to 6'2" and it is worth noting on the drawing that it was estimated that roughly 9.5 sq. ft. of the proposed garage would be in the setback area. He said that he does not know what the new square footage would be based on the measurement. Based on the thought it was 6'4" from the lot line, they were estimating that under 10 foot would be a setback, thus an adjustment slightly upwards.

Commissioner Smith commented that the City Code was amended 3-4 years ago with a requirement for a 6-foot setback. This area was built in the mid 1970's and the aerial view of the GIS maps noting that the lot lines are not like that. Multiple homes in this area have 4- or 5-foot setbacks and some of the garages and outbuildings in the back appear to be on the lot lines that do not meet a 6-foot setback.

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 from Alex and Abby Froelich for consideration of a variance to Section 105-3-5 (e) (2) of the City Code of Ordinances related to the R7 – Residential district side yard setback.

Larry Froehlich (on behalf of his son Alex Froehlich) came forward and stated that he would be available to answer questions, if any, regarding this project, since Alex was not able to attend this meeting.

A second invitation was given to come forward at this time to speak for or against the request from Alex and Abby Froelich for consideration of a variance to Section 105-3-5 (e) (2) of the City Code of Ordinances related to the R7 – Residential district side yard setback.

Chair Robinson inquired if there were any 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.

Planner Stromme stated that there have been no comments received regarding this request.

D. Commission Action

Mayor Helbling suggested that a Letter of Agreement be signed so there is an acknowledgement in the file stating that the property owner next door is in agreement. Chair Robinson inquired how many feet would be encroaching what is now the existing 6-feet of the total length of this – from the front corner that is adjacent from the street to the back? Would it be approximately half of the new structure? At what point would the new structure be conforming with the old 6-feet? Planner Stromme replied that it would be his estimate based on the drawing of the site plan - it shows the 6-foot line based on the measurement, would be adjusted to the west would and slightly increase in size. The applicant stated that at the nearest point the garage would be 5 ft. 1 in. (5' 1") from the lot line and that was adjusted down based on the survey, however it is stated that the garage would be 18 ft. 9 in. (18' 9") from the neighbor's home. Chair Robinson inquired if the setback of the accessory building would start at the corner of the house? If it were a detached garage, it could be closer to the lot line as long as it is located in the rear yard. Based on the drawing adjusted down to the survey amount provided that the neighbor's accessory building is not on the lot line or

encroaching on the property there would be a distance of about 7-feet in between the two buildings.

Commissioner McLean motioned to recommend approval of the variance from Section 105-3-5(e)(2) of the City Code of Ordinances related to the R7 – Residential district side yard setback to permit the variance request due to hardship (Item No. 1) in building with on a lot that is not square with the street. A letter of concurrence must also be received from the neighbor closest to the building site (garage side) which will be the responsibility of the applicants to obtain such letter. Commissioner Leingang seconded the motion. Upon vote, the motion passed with the following vote: Leingang-aye, Huber-aye, Helbling-aye, McLean-aye, Buchmiller-abstain, Smith-aye, Hammond-aye, Robinson-aye.

OTHER BUSINESS

1. Update on Mandan High School Placemaking Study. Planner Stromme provided an update that the Placemaking Study will be completed within the next 30-45 days. The consultant is in the final stages of preparing the final design based on all the information being collected. The next step will be the implementation strategy with Stan Tec. There will be one more steering committee meeting and public informational meeting. Subsequently, the study will be presented to the City Commission and the Park District.

2. Consider request to review definition of “Multifamily”. Planner Stromme referenced the City Code that speaks to “multifamily” that states: “A multifamily dwelling is a building or portion thereof that contains two or more dwelling units on a single lot or parcel of land.” That issue came up recently when a request was received from a development entity to construct numerous structures on one parcel. The idea would be to apply for a building permit and construct an entire neighborhood on one parcel wherein residents would lease their home or a twin home. Concerns were discussed that related to “multifamily definition” as that definition would conflict with placing more than one multifamily structure on one parcel. City staff voiced concerns with this proposal, in particular, the public hearing process that would pertain to the platting of the properties. The current definition that states two (2) or more units per building per parcel came online in 2017. There were no records found as to why that was being proposed at that time. Planner Stromme recommended that discussions pause on this topic of City Code revisions keeping in mind that if there is a time in the future when a consultant is tasked with coming up with a list of recommendations regarding zoning and land use in Mandan. He stated he is apprehensive to make any changes to the definition of multi-family in the city code at this time.

Commissioner Smith commented that he would not be in favor of this type of proposal should it come forward for a decision to change the City Code.

Mayor Helbling inquired if there are any other communities that have complied with what this developer has requested? Planner Stromme stated that he has discussed this issue with other City Planners, however, he has not looked into it close enough to determine what would or would not be allowed. He said that he anticipates contacting the Fargo area to inquire if they have been approached with a similar scenario by any developers.

Commissioner McLean inquired if the developer provided any examples of what he would want revised in the city code? Planner Stromme stated that the request was to amend the city's definition of multifamily to be written in a way that multiple dwelling units in multiple structures would be allowed on one parcel, would be the intended outcome.

Commissioner Huber inquired if this request could be a scenario of what is referred to as a "mother-in-law home" in a family structure situation? Planner Stromme stated that it would be different than that example. The intent is to have one owner, who would lease or rent to several residents. Chair Robinson inquired if this concept would fit under the city's PUD Code? Planner Stromme replied that PUD would not go around the definition of city code, thus, he does not believe that would work. He stated that he will research this matter further explaining that he felt it was important enough to bring before the Board at this time as an informational item.

ADJOURNMENT

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

The meeting adjourned at 6:24 p.m.