

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, June 27, 2022

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on Monday, June 27, 2022, 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 Commissioner members may be attending this meeting remotely.

ROLL CALL

Commissioners Present: Leingang, Mehlhoff, Horn, Helbling, McLean, Frank, Camisa, Vayda, Robinson. Commissioners Absent: Liepitz.

Commissioner Otto has moved to Bismarck and relinquished his seat on the Planning and Zoning Commission on June 23, 2022.

MINUTES

Commissioner Camisa motioned to approve the May 23, 2022 minutes as presented. Commissioner Leingang seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Mandan School District #1 for consideration of a Zone Change from R3.2 – Residential to R7 – Residential. Said property is Lot 2, Block 1, School District 7th Addition First Replat in Section 1, Township 138N, Range 81W. The property is located southeast Mandan, west of 40th Avenue SE, north of McKenzie Drive SE on the southeast corner of 34th Avenue SE and 24th Street SE.

A. Staff Report

City Principal Planner Stromme presented.

Mandan School District #1 is requesting consideration of a zone change from R3.2 – Residential to R7 – Residential for Lot 2, Block 1, School District 7th Addition, First Replat. This property is located in southeast Mandan, north of McKenzie Drive SE, west of 40th Avenue SE on the southeast corner of 34th Avenue SE and 24th Street SE.

Property History

The property was platted into Lakewood 6th Addition in 2012, School District 7th Addition in 2020 and School District 7th Addition First Replat in 2021 following the announcement of the construction of Lakewood Elementary School. It was rezoned from RM – Residential to R3.2 – Residential in tandem with the 2021 replat.

Zone Change

The proposed zone changes from R3.2 – Residential to R7 – Residential will modify permitted land uses for this property as detailed below.

R3.2 – Residential (Existing)

Primary Uses: Single-Family Dwelling and Twin Home
Secondary Uses: Group Dwelling
Conditional Uses: Public Recreation Group, Education Group, Utility service group, Religion group

R7 – Residential (Proposed)

Primary Uses: Single-Family Dwelling
Secondary Uses: Group Dwelling
Conditional Uses: Public Recreation Group, Education Group, Utility service group, Religion group, Accessory dwelling unit, Bed and Breakfast

Zoning and Adjacent Land Uses

Adjacent land uses include low-density residential to the west and north zoned R7 – Residential and R3.2 - Residential, medium density-residential and institutional to the south and an elementary school to the east, both zoned RM - Residential. The proposed zoning aligns with the adopted Future Land Use Plan designation of Low-Density Residential.

Findings of Fact 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 would not adversely affect public health, safety and general welfare.

Engineering & Planning Staff Comments

- The intent of this zone change is to incorporate feedback from area residents regarding the development of this lot.
- A future subdivision plat will be needed to create R7 – Residential sized lots.
- Upon property development, Engineering and Public Works Staff request efforts be made to reduce/minimize cuts into 24th Street SE and 34th Avenue SE where reasonable.
- Staff sent out forty (40) letters regarding this item to adjoining property owners and no comments were received at the time of this staff report.

Engineering & Planning Recommendation

Planner Stromme reported that the Engineering and Planning Staff recommended approval of the zone change from R3.2 – Residential to R7 – Residential for Lot 2, Block 1, School District 7th Addition.

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

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against the request.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against the request. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Camisa inquired if the reason for the revision is to be more harmonious with the surrounding zoning? Planner Stromme stated that the Mandan School District communicated to him that the adjacent homeowners to the west were interested in similarity. The properties to the west are zoned R7.

Commissioner Camisa motioned to recommend approval of the zone change from R3.2 – Residential to R7 – Residential for Lot 2, Block 1, School District 7th Addition. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

2. A request from Cody Stern for consideration of a Special Use Permit for Multi-use shops. Said property is Lot 1, Block 2, Riverwood Commercial Park 3rd Addition to the City of Mandan, Morton County, North Dakota in 26, Township 139N, Range 81W. The property is located in east-central Mandan, the southeast corner of Riverwood Drive SE and Memorial HWY SE.

A. Staff Report

City Principal Planner Stromme presented.

Cody Stern is requesting consideration of a Special Use Permit to allow multi-use shops (shop condos) on Lot 1, Block 2, Riverwood Commercial Park 3rd Addition. The property is located in east-central Mandan, on the southeast corner of Riverwood Avenue SE and Memorial Highway SE.

Property History

The property was platted into Riverwood Commercial Park in 2004 and later replatted into Riverwood Commercial Park 3rd Addition in 2012. The property was zoned MA – Industrial in 2013 (Ord. 1139). It is presently undeveloped.

Special Use Permit

Multi-use shops are permitted in this 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. Staff findings related to the evaluative criteria is shown in Exhibit 7.

Memorial Highway Overlay

The property is located in the Memorial Highway Overlay district. Heightened aesthetic controls including, but not limited to landscaping, building materials and signage are to be evaluated by the Mandan Architectural Review Commission.

Zoning

All lots are proposed to remain in MA – Industrial which permits the following uses: Retail Group A, Retail Group B, Service Group A, Service Group B, Wholesale Group, Industrial Group A.

Adjacent Land Use

Adjacent land uses include heavy and light industrial, retail, office and multi-use shops. Adjacent zoning includes MB – Industrial to the west, MA – Industrial to the north and south and CB – Commercial to the west.

Engineering & Planning Staff Comments

- A trail is slated to be constructed on the south side of Memorial Highway adjacent to the site. Adequate setback between the paved surface of the trail and parking lot must be met.
- Staff requests that boulevard tree landscaping be installed along Riverwood Drive SE.
- Certain land uses may be restricted in units that lack fire suppression or other building/fire code requirements.
- Staff has not received any comments on this item. A total # of letters were sent out to adjacent property owners.

Engineering & Planning Recommendation

Planner Stromme reported that the Engineering and Planning Staff recommended approval of the Special Use Permit for Multi-Use Shops on Lot 1, Block 2, Riverwood Commercial Park 3rd Addition. Cody Stern is available to answer questions.

Commissioner Camisa inquired how many letters were sent out? He referred to the Engineering and Planning Staff comments, in particular: Staff has not received any comments on this item. A total # of letters were sent out to adjacent property owners. Planner Stromme stated that about fifteen (15) letters were sent out and that no comments were received from any of the property owners.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against this matter.

C. Close Public Hearing

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against this matter. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Mehlhoff commented this property is located in a gateway overlay district; thus, it will go before the Mandan Architectural Review Commission (MARC) so they will screen any dumpster location and matters such as that. He commented it is not clear where the dumpsters would be placed since the lot appears to be full, He does not have a problem with the proposal and it appears they will have the trash located inside the building. Planner Stromme clarified the property is in the gateway overlay and that was included in the Planner's Report stating that any commercial building in Mandan would be subject to MARC review. He will assure that is the arterial overlay for this item is in place.

Commissioner Mehlhoff motioned to recommend approval of the special use permit for multi-use shops on Lot 1, Block 2, Riverwood Commercial Park 3rd Addition. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

3. A request from JLJ Developers for consideration of a Final Plat for a subdivision to be titled Mandan Industrial Park 11th Addition. Said property is Lots 3-6, Block 1, Mandan Industrial Park 10th Addition to the City of Mandan, Morton County, North Dakota in Section 17, Township 139N, Range 81W. The property is in northwest Mandan, south of Old Red Trail NW on the west side of 30th Avenue NW.

A. Staff Report

City Principal Planner Stromme presented.

JLJ Developers, LLC, is requesting consideration of a final plat for a subdivision to be titled Mandan Industrial Park 11th Addition. This property is located in northwest Mandan, south of Old Red Trail and west of 30th Avenue NW.

Property History

This land was platted into Mandan Industrial Park 7th Addition in 2002 and Mandan Industrial 10th Addition in 2015. The development of these four (4) lots has not occurred, however, limited utilities (storm water and water infrastructure) have been installed on the property. The right-of-way for 42nd Street NW was vacated in 2015 at the 7/7/2015 City Commission.

Final Plat

The preliminary plat is 4.29 acres in size and contains four (4) lots in one (1) block.

- Lot 1: 40,740sf (.94 acres)
- Lot 2: 35,011sf (.80 acres)
- Lot 3: 22,300sf (.51 acres)
- Lot 4: 89,074sf (2.04 acres)

Planner Stromme explained there was a slight change made following preliminary plat approval to remove the access easement on the south property line. A storm water easement was added in that area and stated that staff is comfortable with the change. What was shown on the south end as an access easement has been taken off and it is now a storm water utility easement. This mirrors the Industrial Park 12th Addition that is located directly south. The only request for approval at this meeting is the Final Plat four (4) lots in one (1) block, wherein aside from the access easement being removed, there were no other changes.

Utilities, Easements and Access

No new public right-of-way is proposed for this subdivision plat. Fifteen (15') and thirty-foot (30') access and utility easements are shown connecting all lots to public right-of-way and carry over from the plat for Mandan Industrial Park 10th Addition.

Special Use Permit

A special use permit for Multi-Use Shops (shop condos) was recommended for approval at the 5/23/22 Planning and Zoning Commission and ratified at the 6/21/22 City Commission meetings. Fifty-six (56) units are planned for the property. The SUP is attached.

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

- Staff has not received any comments related to this item from the public. Forty-one (41) letters were sent out to adjacent property owners.
- Adequate fire-turn around facilities must be provided throughout the development.
- Certain uses may need to be restricted in units that lack fire suppression or other building/fire code requirements.

Engineering & Planning Staff Comments

- A Development Agreement may be drafted for this subdivision.
- A city gravity sewer main bisects the property within the proposed central access and utility easement. The city will retain ownership and maintenance of the sanitary main,

but will not own or maintain any other utilities within this easement area, including but not limited to site-serving utilities.

Engineering & Planning Recommendation

Planner Stromme reported that the Engineering and Planning Staff recommended approval of final plat for Mandan Industrial Park 11th Addition. A member from the Development Team was available to answer questions.

Commissioner Camisa requested a refresher of what took place when the minor plat was discussed at the City Commission. Did the commission create a storm water easement via plat or was there a recorded agreement for that? Planner Stromme replied that with regard to the 12th Addition, it would have been created on the plat as the area the easement was in the previous right of way. The surveyor involved is present to explain further, clarifying that it was created on the plat because the area where the easement was previously in right of way.

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

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against this request.

C. Close Public Hearing

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against the request. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson inquired if there were any other questions or comments from the Planning Commission.

Commissioner Mehlhoff stated that he watched the City Commission meeting and requested a confirmation that access to Lot 4 will be to through access easement for Lot 1 and 2. Does the Planning Department anticipate 32nd Avenue as being developed as a drain through there? Planner Stromme replied that is correct, that at the City Commission meeting, he detailed further the access to Lot 4, which is the rear lot in this subdivision. There are three (3) access point easements that provide access from 30th Avenue which is constructed to that property and with 32nd Avenue not being built and not likely to be built anytime soon, that will be the primary way for Lot 4 to be accessed. In terms of, if 32nd Avenue will be built, it's not likely, but anything is possible. When it may happen, they may be able to gain access from it however, subsequently they will use the subdivision to get access to the right of way on 30th Avenue.

Commissioner Mehlhoff motioned to recommend approval of final plat for Mandan Industrial Park 11th Addition. Commissioner McLean seconded. Upon vote, the motion passes unanimously.

4. A request from WW Ranch LLP for consideration of a preliminary plat for a subdivision to be titled Meadow Ridge Business Park. Said property is Lot 3 Less Lot A of Lot 3 of Auditor's Lot 3 in Section 22, Township 139N, Range 81W of the City of Mandan, Morton County, North Dakota. The property is located in north central Mandan, north of Old Red Trail NW between Collins Avenue/Hwy 1806 and 8th Avenue NW.

A. Staff Report

City Principal Planner Stromme presented.

WW Ranch Limited Partnership is requesting consideration of a Preliminary Plat and Zone Change from MC – Industrial to CC – Commercial Restricted for a subdivision to be titled Meadow Ridge Business Park. The property is located in north central Mandan, west of Hwy 1806, north of Old Red Trail near 8th Avenue NW.

Preliminary Plat

The proposed preliminary plat for Meadow Ridge Business Park is 5.53 acres in size and contains three (3) lots in one block. Lot 1 is the larger of these three (3) lots.

Access, Easements and Utilities

Access to the proposed subdivision is planned to come from Old Red Trail. A central, shared ingress/egress and utility easement runs from Old Red Trail to Lot 1, Block 1 through Lots 2 and 3. The nearest access points along Old Red Trail are roughly 400 ft to the east (4th Avenue NW – Heck Addition) and 1,050ft to the west (8th Avenue NW) as measured from centerline of ROWs and the proposed access point. A seven-foot (7') utility easement is shown around Lots 1, 2, and 3. A WBI high-pressure natural gas line passes just south of the subject subdivision. It is expected that City Sanitary Sewer will be installed on Old Red Trail as part of Street Improvement District 227. An access easement was reserved in bordering Heck Addition that may be used to provide access to this plat.

Property History

The property was previously platted into Pioneer Industrial Park First Addition in 1980, however industrial development never occurred on the site. It was reverted to auditor's lots thereafter. A small sliver of land on the west side of this property was transferred/platted into Heck Addition in 2022.

Zoning

The requested zone change would place the property in a CC – Commercial Restricted district. The intent is to match the zoning and restrictions of the neighboring Heck Addition, Mandan High School, properties. A copy of Ordinance 1406 is included in the packet (Exhibit #3). The proposed zoning change aligns with the Future Land Use Classification of Commercial and is compatible with adjacent zoning. Certain liquor licenses (A, D and D-1) are restricted per Sec. 4-1-4 of the City Code of Ordinances. Medical Marijuana Dispensaries and Growing Facilities are prohibited per Section 101-1-3 of the City Code of Ordinances.

Permitted Uses

MC – Industrial (Existing)

Retail A and B, Service A and B, Filling Station, Wholesale Group, Fire Station, Truck Terminal, Utility Service Group, Industrial Group A, Crematorium

CC – Commercial Restricted (Proposed)

Hotel/Motel, Retail A and B, Service A and B (no multi-use shops or self-storage), Filling Station, Office-Bank Group, Commercial Recreation Group, Wholesale Group, Church, Health-Medical, Education, Public Recreation Group, Fire Station, Utility Service Group

Adjacent Properties and Land Use

Adjacent properties are in the CB – Commercial and CC – Commercial Restricted districts. The land uses contained on these properties include motor vehicle sales and repair, a petroleum logistics facility and undeveloped commercial and institutional lands – the New Mandan High School.

Findings of Fact - Preliminary Plat

1. All technical requirements for consideration of a preliminary plat have been met;
2. The proposed subdivision would likely not have substantial effects on the safety and circulation of public roadways in the vicinity, and therefore no traffic impact study is required;
3. 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;
4. 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;
5. The proposed subdivision is not located in the Special Flood Hazard Area or an area where development would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development;
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed subdivision is consistent with the Comprehensive Plan, the Future Land Use Plan, and other plans and studies, policies and accepted planning practice;
8. 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 would not adversely affect public health, safety and general welfare.

Agency & Other Department Comments

- MDU requested easements that are shown on the plat (Exhibit 2).
- The Bismarck-Mandan MPO indicated support for one access point to Old Red Trail NW.

- Staff reviewed the National Wetlands Inventory (NWI) and FEMA Flood Maps. The property is not in a floodplain and does not contain wetlands.
- Staff requests proactive consideration of pedestrian access from Heck Addition to the proposed subdivision and acknowledges terrain may present challenges.
- Plans for SID 227 (Heck Addition) indicate water, sanitary and storm sewer being extended to 8th.
- Avenue/Foundation Addition) and for Old Red Trail to be striped with a center turn lane from 8th Avenue NW to the roundabout on Collins/Old Red Trail. This turn lane should provide an adequate dedicated facility to access the site.
- A City sidewalk and boulevard landscaping will be required along Old Red Trail.
- Planning Staff requests a sidewalk be constructed to connect Lot 1, Block 1 to the sidewalk on Old Red Trail.
- A Development Agreement will be drafted for this subdivision plat.
- Seven (7) letters were sent to adjoining property owners to notify of the request. There were no comments were received by staff at the time of this report.

Engineering & Planning Recommendation

Planner Stromme reported that the Engineering and Planning Staff recommended approval of the preliminary plat and zone change from MC – Industrial to CC – Commercial Restricted for Meadow Ridge Business Park. Members of the development team are available to answer questions.

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

Commissioner Camisa commented that when looking at the bottom of the plat near Old Red Trail, there appears to be a gap between the actual pavement of Old Red Trail and the south boundary. He inquired if the right of way of Old Red Trail actually abuts the boundaries of the plat, and in particular, what is being divided into lots as a natural gap between the right of way and the property? Planner Stromme explained that he believes it is a right of way directly south of the property line for Old Red Trail. Commissioner Camisa noted that it is one of the wider roads that is not noted on the plat so there might be some question as to ownership. It may appear to someone not familiar with this that it is just the width of the road. Planner Stromme stated that, if necessary, he will confirm the width and provide clarification of the width of the road in the event that question would come up at a later time.

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

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against this request.

C. Close Public Hearing

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against this request. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson inquired if there were any other questions or comments from the Commission.

Commissioner Mehlhoff commented that according to the parcel, it appears there is a wedge piece of a lot, west of the property, that is owned by the same entity as the subject area and it seems like that is being left out of the process. Planner Stromme explained that there is a small sliver of land that was transferred via the auditor's plat process and then further platted into Heck Addition. Thus, when the Heck Addition gets fully put into GIS – that's going to go into the Kramer Subaru property. The reason that sliver of land was created was due to it being a steep hill on the Kramer Subaru site, thus it was felt to be finer in nature and rather than have Subaru go through a number of platting steps, the city had it recorded as auditor's plat into Heck Addition and it will be updated as that in the GIS system.

Commissioner Mehlhoff motioned to recommend approval of the preliminary plat and zone change from MC – Industrial to CC – Commercial Restricted for Meadow Ridge Business Park. Commissioner Leingang seconded the motion. Upon vote, the motion passed unanimously.

5. A request from Brandon Zachmeier for consideration of a variance from Section 105-4-1 of the City Code of Ordinances related to A – Agriculture District to permit the construction of a Commercial Accessory Building. Said property is Lots 2 and 3 of Lot A of the North ½ of Section 10, Township 139N, Range 81W, Morton County, North Dakota. The property is in the extraterritorial area in north Mandan, east of Hwy 1806 N, south of 37th Street N on the east side of Rock Haven Harbor Road North.

A. Staff Report

City Principal Planner Stromme presented.

Brandon Zachmeier is requesting consideration of a variance from Sec. 105-4-1 – A Agricultural District of the City Code of Ordinances to permit the expansion of an existing commercial use on a lot in the A – Agricultural zoning district. The property is located in the extraterritorial area in north Mandan, east of Hwy 1806 N, south of 37th Street N on east side of Rock Haven Harbor Road North, located north of the MDU facility and east of the Humane Society.

Request

This request would be considered a land use variance to permit the continuation/expansion of a legal-nonconforming Commercial land use in the A – Agricultural District of the City's extraterritorial area. An expansion of the existing use is not permitted in the zoning or under code provisions related to existing uses/nonconformities. The proposed expansion would be a Retail and Service Group B use, not listed as an allowed use in A – Agriculture.

Property History

The property was developed prior to 1981. At the time of development, the property was not in the City of Mandan ETA and was therefore developed to county standard. Presently it is considered a commercial use in the City Code of Ordinances, the type of commercial operation that exists would not be permitted in an agricultural district and the language regarding listing non conformities, for example, would not permit a building expansion. The variance from the agricultural district would permit the creation of a new commercial accessory building to go on this property that otherwise would not be permitted under current ordinances or with the city's existing use language.

Property Information

A WAPA Transmission Line bisects Lot 2. The property is presently used for marine repair and accessory sales (docks etcetera). A residence exists on Lot 3 with a boat launch on Lot 2. An established screening of mature evergreen trees surrounds the property on the north, west and south property lines. The sections of the city code that relate to this are included below.

Applicable Code Sections

Section 105-1-1 (2 & 3) – Existing Uses

(2) Extension of nonconforming use. The nonconforming use of a building may be extended throughout any part of a building clearly designed for such use, but not so used at the date of the adoption of this chapter. No nonconforming use may be extended to occupy neither any land outside the building nor any additional building not used for such nonconforming use at the date of adoption of this chapter. The nonconforming use of land shall not be extended to any additional land not so used at the date of the adoption of this chapter.

(3) Additions, repairs and alterations of nonconforming use. No building used for a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless the use is changed to one which complies with the provisions of this chapter; provided, however, repairs and maintenance work may be carried out each year in an amount to not exceed 25 percent of assessed value of the building for that year, but such repairs and maintenance work shall not increase the cubical content of the building nor the floor area devoted to the nonconforming use, nor shall it increase the number of dwelling units provided in a building. Nothing in this chapter shall be deemed to prevent the strengthening nor repair of a building which may be necessary to restore the building to a safe condition or to improve the sanitary condition of the building, provided that such strengthening and repair may not be used to restore a building contrary to the provisions of subsection (4) of this section. Nothing in this chapter shall prevent the issuance of a building permit to structurally alter a building, provided that the nonconforming use is reduced and such alteration does not increase the cubical content of such a building.

Section 105-4-1 – A Agricultural District

In any A Agricultural District, the following regulations shall apply:

(1) General description. The A Agricultural District is established as a district in which the predominant use of land is for general agricultural uses. For the A Agricultural District, in promoting the general purposes of this chapter, the specific intent of this section is as follows:

a. To encourage the continued use of the land for agricultural uses.

- b. To prohibit scattered commercial and industrial uses of the land and to prohibit any other use which would interfere with an integrated and efficient development of the land for more intensive urban uses as the city expands.
- c. To discourage any use which, because of its character or size, would create unusual requirements and costs for public services, such as police and fire protection, water supply and sewage before such services could be expanded efficiently in the normal development of the city.

(2) Uses permitted

a. The following uses are permitted:

- 1. Single-family dwelling.
- 2. Church.
- 3. Education group.
- 4. Public recreation group.
- 5. Fire station.
- 6. Railroad line trackage.
- 7. General farming group, as defined in section 105-1-4.
- 8. Truck farming group, as defined in section 105-1-4.
- 9. Utility service group.
- 10. Airport
- 11. Golf course.
- 12. Oil and gas well.
- 13. Radio or television transmitting station.
- 14. Sand or gravel extraction.
- 15. Sewage treatment plant.
- 16. Fireworks stand.

b. Provided, however, that on a record lot having an area of less than five acres, but not less than 20,000 square feet, corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived, any of the following uses are permitted:

- 1. Single-family dwelling.
- 2. Church.
- 3. Education group.
- 4. Public recreation group.
- 5. Fire station.
- 6. Railroad line trackage.
- 7. General farming group, as defined in section 105-1-4.
- 8. Truck farming group, as defined in section 105-1-4.
- 9. Utility service group.
- 10. Animal hospital.
- 11. Oil or gas well.
- 12. Fireworks stand.

Zoning and Future Land Use

The property and all adjoining lands are zoned A – Agriculture. The Future Land Use Designation is for rural residential. (Exhibit 4). Adjacent land uses are residential and

agricultural in nature. The City Extraterritorial Area extends to 37th Street N, roughly 500' north of this property.

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 and within the A – Agricultural 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

Mr. Zachmeier has corresponded with WAPA regarding the siting of the proposed structure he would like to construct.

Engineering & Planning Staff Comments

- Staff was unable to find a recent example for a use variance. An alternative, however lengthy process would be to amend the Future Land Use Plan and rezone (would be considered spot-zoning) to make a conforming use.
- If granted, a plat will be required as the City does not have a structure to issue variances from platting. Existing language related to waiving the platting requirement only permits platting to be delayed, not avoided altogether. A link to the variances was provided in the agenda packet.

Engineering & Planning Recommendation

Planner Stromme reported that the Engineering and Planning Staff recommended review of the request and findings of fact, identifying a hardship, and modifying the findings of fact to support the motion of the Board.

Commissioner Camisa inquired if the business had been established when the property was developed in 1981 and if that was the date when the business started? Planner Stromme replied that he did not have a date when the business was established. He said that he is aware that prior to the north annexation, they did bring it into the ETA with the business as operational at that point.

Commissioner Mehlhoff commented that according to the parcel map, it shows Sylvia Zachmeier as the owner. How does that work with the applicant – does the city verify his ownership? Does Sylvia Zachmeier have to sign off on it? Is that a relative of Brandon Zachmeier? Planner Stromme replied that Sylvia Zachmeier is a grandmother to Brandon Zachmeier and half owner to the property. The city is comfortable with the application as presented. Brandon Zachmeier runs the business located on the property. Commissioner Camisa inquired if the property will change hands by the time the plat will be signed off so that Brandon Zachmeier is the lawful owner by the time the plat is approved by the city? Planner Stromme stated that he is not clear on that, however, he stated he will assure that he is the owner listed on the plat at the time.

Chair Robinson again inquired if there were any comments or questions.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against this request.

Wade Bachmeier, 8315 Willow Road North came forward to speak. He stated he is here tonight on behalf of Brandon Zachmeier, the applicant. He provided clarification as follows: (1) Brandon Zachmeier did purchase this property per a contract for deed from his grandparents approximately two (2) years ago. He has a copy of the contract for deed if anyone wishes to review it. He stated that the property is in Brandon Zachmeier's name by virtue of a contract for deed. At the time, Louie and Sylvia Zachmeier sold the property to Brandon under the condition that they would have a life estate, thus, that's why it shows up in the public records under Sylvia Zachmeier's name. Louie Zachmeier passed away a-year-and-half ago. It still shows up under Sylvia's name and as a result of the life estate, however, Brandon did purchase the land via a contract for deed.

(2) Louie and Sylvia Zachmeier purchased the one lot, a south lot, in 1970 and the adjoining lot in 1972. When they started the business, he stated he does not know exactly when, but it was sometime in the 1970's. They built a residence and they built a shop. Originally the shop was built to service the vehicles and over the years as the area expanded with the river front development with people having boats and pontoons and watercraft, Louie Zachmeier saw the need for a marine repair business. He then transferred out of the vehicle repair business into the marine business. The business has been there for approximately fifty (50) years. Brandon eventually took the business over and expanded it further.

Mr. Bachmeier stated that he looked up the variance and there are five (5) items for consideration: (i) Compliance with the Ordinance would cause an extraordinary hardship; (ii) The variance would not have an effect on traffic capacity; (iii) That it does not injure other properties located adjacent; (iv) That the request for variance is unique to the property; (v) That the variance is consistent with the proper development in the area.

Mr. Bachmeier commented that as far as a hardship situation, zoning it commercial would eliminate the ability to use the existing residence, that has been there for almost 50 years. Zoning it residential would eliminate the ability to use it as a business, that has been in existence for almost 50 years. Another hardship would be finding an additional suitable property because of its location on the Missouri River and because it is a Marine service business and the ramp being located there, makes sense. He said that he and Brandon did look for other suitable properties but they did not find anything. In terms of traffic, there have been no traffic concerns. Adjacent property owners will speak in support of Brandon Zachmeier's request. One property owner could not be present tonight but will be available via telephone if needed, to voice her support of Brandon's request. There are no known concerns from any other adjacent property owners. The variance request in terms of proper development in the area, this property is surrounded by trees to the north, west and south sides (east side is river front). The final hardship - he stated he has resided there for over 25 years and all those years, he has used the marine service at least twice a year, possibly more. He requested the Planning Commission to consider the hardship it will create for himself and

the residents in that area who use the service repeatedly. This is a business that is crucial for the area and if it were removed it would create a hardship for area residents.

Commissioner Camisa commented that under his extensive knowledge of the property and its ownership – he inquired if Mr. Bachmeier would know if Sylvia Zachmeier and Brandon Zachmeier have joint tenancy on that property under the contract? Mr. Bachmeier stated he would have to research that to make sure however he stated that he believes it was joint tenancy. According to Brandon, the contract for deed was recorded.

Chair Robinson again inquired if there were any comments or questions for Wade Bachmeier.

Tyler Gangl, a resident who has lived in this neighborhood for several years, came forward to speak. He stated that the marine business is considered a staple of that area of Mandan and is invaluable to the residents of that area. He is in support of Brandon Zachmeier's request as presented.

Perry Schlosser, 2145 Missouri Loop North, came forward and stated that he is in support of Brandon Zachmeier's request as presented.

Scott Carter, 5462 Rock Haven Harbor Road North, came forward and stated that he is a neighbor to Brandon Zachmeier. He stated that he along with many of the neighbors in this area support Brandon's request as presented. He said he is not aware of anyone that opposes this variance. The building would be an asset to the property and stated that Mandan needs the marine service business.

Chair Robinson again inquired if there were any comments or questions.

C. Close Public Hearing

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against.

D. Commission Action

Commissioner Mehlhoff inquired of Planner Stromme that if the Planning Commission approves this request and Brandon Zachmeier builds the accessory building and he continues with his business with the expansion, what will happen if he does find another location or he goes into a different industry? What controls does the city have over this and will it still remain agricultural in zoning? It will be re-platted – what will be the outcome if it changes hands in the future if this request is approved? Planner Stromme explained that the variance request will be to permit a new building to be built on this property. It will continue to be a non-conforming use in the agricultural zoning district and the language in the code regarding non-conformities would apply going forward. This is not written to have a specific expiration date should the property change hands. The city code, in particular, Section 105-11 existing uses will speak to that and its entirety. A sunset clause was not put on since the code already addresses non-conformity. Commissioner Camisa stated that it would be his understanding that the variance is not subject to ownership, rather it travels with and runs

with the land. Planner Stromme stated that the understanding that it will run with the continuing use of the land and as soon as that continuation stops, the sale, or someone else purchasing it would not be able to buy it and make it a marine repair by right, right of way, because it is not the right zoning for that. Use variance will expire when the use ends and that business closing would be an example of the ending use. For example, if it were a set back variance and the building is still there after that business closes or moves on. The use variance would permit additional things to be placed on the property for additional non-conformities or whatever it would be called, that it speaks to. Commissioner Camisa commented that if Brandon Zachmeier decides in the future, that he wants to sell the marine business to another owner, that owner would still have the use under the variance, to continue that business. Planner Stromme stated that it is his understanding that is correct as long as it is still the same use. Additional aspects of it would not be permitted under the code and would need to be addressed should that occur in the future.

Chair Robinson inquired if there were any other questions or comments from the Planning Commission.

(Planner Stromme stated there is a statement of hardship contained within the staff report - within the questions the applicant answered – that can be found immediately after the application noting that statement of hardship may be used. Commissioner Camisa suggested that the statement of hardship that could be used is a pre-existing use prior to the adoption of the extraterritorial area as a pre-existing use and the hardship is the new code being adopted after the development of the property as a hardship.)

Commissioner Leingang motioned to recommend approval of the variance to Section 105-4-1 A-Agriculture District of the City Code of Ordinances to allow the construction of a Commercial Accessory Building on Lots 2 & 3 of Lot A of the N ½ of Section 10, Township 139, Range 81, Morton County due to the following hardship: that the statement of hardship is a pre-existing use prior to the adoption of the extraterritorial area and the hardship is the new code being adopted after the development of the property as a hardship, based on code change from county to city.

Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

OTHER BUSINESS

Planner Stromme announced that the Agenda for July 25, 2022 meeting does not have any applications or items for review. He stated that meeting will be cancelled and the next meeting will be held on Monday, August 22, 2022.

ADJOURNMENT

Commissioner Camisa motioned to adjourn the meeting. Commissioner Vayda seconded. Upon vote, the motion passed unanimously.

The meeting adjourned at 6:25 p.m.