

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, May 23, 2022

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on May 23, 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, Horn, Helbling, McLean, Camisa, Vayda, Robinson.
Commissioners Absent: Mehlhoff, Liepitz, Frank, Otto.

MINUTES

*Commissioner Camisa motioned to approve the April 25, 2022 minutes as presented.
Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.*

PUBLIC HEARINGS

1. A request from Isaiah and Ruth MacDonald for consideration of a Variance from Section 105-1-2 (5, A, 3) and Section 105-3-9 (10) of the City Code of Ordinances related to setbacks for Accessory buildings. Said property is Lot 11, Block 46, Mandan Proper Addition. The property is located in west Mandan, south of 3rd Street NW on the east side of 6th Avenue NW.

A. Staff Report

City Principal Planner Stromme presented.

Ruth and Isaiah MacDonald are requesting consideration for a variance from Section 105-1-2 (5) (a) (3) – *Accessory Buildings Setbacks* of the City Code of Ordinances to reduce the setback required for garage doors oriented towards alleyways from ten feet (10') to five feet (5'). They are also requesting a reduction in the rear yard setback from ten feet (10') to five feet (5') (Sec. 15-3-9 (10) – *RM – Residential; Rear yard setback* and to increase the allowed lot coverage from 40% to 42% (Sec. 105-3-9 (7) – *RM – Residential, Floor area ratio*. This property is in west central Mandan, on the east side of 6th Avenue NW between 3rd and 4th Streets NW.

Property History

This lot was platted into Mandan Proper Addition in 1887. The home was constructed in 1939. The property previously had a detached garage to house two vehicles. The detached garage was removed prior to the applicants living in this home within the last 10 years.

Proposed Accessory Building

The proposed accessory building would be 1,368 sf in size. (Exhibits 3 and 4). The structure will be 1,378 sq ft. and the setback proposed would be five feet from the alley.

Applicable Code Sections

105-1-2 (5) (a) (3) – Supplementary Provisions; Accessory Buildings Setbacks

Accessory buildings containing a garage door that faces an alley must be set back at least ten feet in order to accommodate the turning radius of a vehicle. When the property has no existing parking spaces other than the area for the proposed accessory building or has more than one dwelling unit, the minimum setback for an accessory building containing a garage door facing an alley must be 22 feet in order to allow space for parking of a vehicle in front of the garage door. They are planning for off street parking which would be at the 10-foot line wherein the request would go even further down to 5 feet and that would require the variance for the alleyway, garage door and rear set back.

Sec. 15-3-9 (10) – RM – Residential; Rear yard setback

Each lot shall have a rear yard not less than ten feet in depth.

Sec. 105-3-9 (7) – RM – Residential; Floor area ratio

The floor area ratio of the principal building and all accessory buildings shall not exceed 0.40 for single-story buildings, nor shall it exceed 1.20 for buildings of more than one story. The ground area occupied by the principal and accessory buildings shall not exceed 40% of the total area of the lot. In computing floor area ratio and ground coverage; 200 square feet shall be added to the actual area of the building for each car space required by this chapter, if such space is not furnished within a building.

Zoning

This property is zoned DF – Downtown Fringe. Residential development in this district is subject to RM – Residential standards.

Planner Stromme stated that there were no comments received from the public. A total of 17 letters were mailed to adjacent property owners. If the variance is granted, any water and sewer connections for the proposed structure will be tied in to existing service lines.

Planner Stromme recommended reviewing the above report, identifying a hardship and modifying the findings of fact as necessary to support the motion of the Board. The applicants are available to answer questions.

Chair Robinson inquired if there were any comments or questions.

Commissioner McLean inquired if there have ever been any exceptions for these types of setbacks granted in similar situations in the past? Planner Stromme replied that there is precedence in the code for setback reductions and variance requests to reduce setbacks. He stated that since he started in this position with the City of Mandan, the Board has allowed the lot coverage to be increased for a similar zoning in the Downtown Fringe District.

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.

Mr. Skoog came forward and stated that his property is located to south of the MacDonald's property. He stated that his garage has a 5-foot setback and the neighbor to the east of them has the same setback also. He said he has a 2-car garage door and he does not have any issues as far as turning out into the alley. He stated that he supports the request for the variance presented by the MacDonald's.

Isaiah MacDonald came forward and stated that some of the images included within the application are images of the garages, specific to his and also the neighbor to the east. He believes that is testament to the safety of everyone if the variance is granted.

Mayor Helbling inquired of Mr. MacDonald with regard to the property next to him that has a 5 foot setback - and the property directly across the alley (from MacDonald's) has a fence located right on the property line wherein his neighbor's does not – he said that he finds it hard to support a 5 foot setback – because he does not think anyone could turn a regular sized vehicle into that garage without difficulty getting in there due to that fence being located right up to the property line – pointing out that the neighbor (to MacDonald's) has a big open area to back out of the garage and maneuver around. Isaiah MacDonald replied that he has never seen a need for his neighbor to turn a wider radius into the opposing lot in order to get into his garage even when there is another car parked within that garage, he would still be able to maneuver around and get his car in and out of the garage safely.

Mr. Skoog came back to the podium and stated that he can speak to that because there is a big parking area there. He said he has a Ford 150 extended cab and he said he has parked in that spot, for ease, and he has not had any issues as far as making that corner into the lot.

Chair Robinson inquired if there were any comments or questions.

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.

D. Commission Action

Planner Stromme recommended reviewing the report he provided and determine if it is sufficient for the applicant to be relieved of the ordinances, however, he did not have a personal recommendation for this request. He stated that it his responsibility is to advocate on behalf of the zoning code and the requirements contained within it.

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

Commissioner Camisa stated that he owns a house in the downtown area of Mandan and that he is aware of the non-conforming lots size and there are challenges when trying to use that small lot effectively. He said that it is not ideal to have only 5-feet to the alley, however he understands that it can be difficult working with these types of lots.

Commissioner Camisa motioned to recommend approval of the variance from Section 105-1-2 (5) (a) (3) – Accessory Buildings Setbacks and Section 15-3-9 (10) – RM – Residential; Rear yard setbacks, and Section 105-3-9 (7) – RM – Residential; Floor area ratio of the City Code of Ordinances to allow for a reduction in the minimum rear yard setback and alley facing garage door setback from ten feet to five feet and increase the lot coverage amount to 42 percent for Lot 11, Block 46, Mandan Proper Addition. Commissioner McLean seconded the motion.

Commissioner McLean stated that he was not basically concerned about the 5-foot setback however there are many side-load garages, even in new developments that probably do not have any more room when people are loading into the side of the garage, which is a similar situation as has been presented here. This variance request is due to a small lot. Is the garage 32-feet deep? Planner Stromme stated that the structure and its site plan is included within the packet that shows 48-feet deep, 32-feet across however the entire structure is not going to be used for parking vehicles in the other space accessory building. From the alley that runs north to south it is 32-feet and from east to west it is 48-feet.

Chair Robinson called for a roll call vote:

Commissioner Leingang: Yes; Commissioner Horn: Yes; Mayor Helbling: No;

Commissioner McLean: Yes; Commissioner Camisa: Yes; Commissioner Vayda: Yes;

Commissioner Robinson: Yes. The motion passed.

2. A request from JJJ Developers for consideration of a Preliminary Plat and Special Use Permit 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 138N, Range 81W. The property is located in northwest Mandan, south of Old Red Trail and west of 30th Avenue NW.

A. Staff Report

City Principal Planner Stromme presented.

JJJ Developers, LLC, is requesting consideration of a preliminary plat and special use permit to allow multi-use shops (shop condos) in Mandan Industrial Park. 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 and when they are re-platted, they will go into 11th Addition. The development of these 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 (See: 7/7/2015 City Commission). The request is to convert the

4 lots into a reconfigured 4-lot plat which would put 3 lots on 30th Avenue NW and one larger lot in the rear off of the right of way of 42nd Street NW.

Preliminary Plat

The preliminary plat is 4.29 acres in size and contains 4 lots in one 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)

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

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.

Zoning

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

Future Land Use Plan

The City's Future Land Use Plan includes a future underpass under Interstate 94 in this area. This is also shown in the Fringe Area Road Masterplan and North Mandan Subarea Study. The identified alignment is shown in Exhibit 11.

In addition to infrastructure, the Future Land Use Plan contains goals specific to aesthetic components of new and existing structures along community thoroughfares. In order to implement these components of the plan, staff recommends the following in anticipation of the underpass.

- A sidewalk must be installed on along Lots 1-3, Block 1 upon development and on Lot 4 if/when 32nd Avenue NW is constructed.
- Boulevard landscaping must be installed along Lots 1-3, Block 1 upon development and Lot 4 when developed and if/when 32nd Avenue NW is constructed.

The shop units located along 30th and 32nd Avenues shall contain architectural components oriented towards the public ROW including varied finishes, windows, lighting, and perennial landscaping. Overhead doors oriented internal to the development are permitted. Pedestrian entrances oriented towards the public right-of-way are strongly encouraged.

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.

Planner Stromme reported the following:

- 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.
- A Development Agreement will be drafted for this subdivision.
- A City gravity sewer main bisects the property within the proposed central access and utility easement.

Planner Stromme stated that the Engineering and Planning staff recommend approval of the preliminary plat for Mandan Industrial Park 11th Addition and a Special Use Permit for shops on this property. The Engineering Team is available to answer questions.

Chair Robinson inquired if there were any comments or questions.

Commissioner Camisa requested viewing a satellite image of the area in comparison to the plat and that Planner Stromme explain the water retention and water flow in that area. Planner Stromme presented an aerial view of the plat and he requested City Engineer Froseth explain the water flow. Planner Stromme stated that the water retention area is located next to the Railroad Museum and it has been identified in the Future Land Use Plan that would be a right of way for an underpass either on 30th or 32nd Avenue. When reviewing with the City Engineer Froseth, those options are not jumping out as being more feasible, however the proposed development would be near 32nd Avenue NW and the existing storm water flow goes into the dam. Commissioner Camisa inquired

when placing a road on top of that waterway what are the impacts that will potentially be seen or how would that work with engineering if there was a road put over the top of it? Director Froseth explained that a road over this corridor would be the most feasible road location in the future. The city has a right of way there but should there be a crossing in this vicinity it would be more practical to focus on 30th Avenue because to build a road over the waterway would be challenging. Also, when traveling north that is where the 30th Avenue corridor starts and there is the question if it should be extended further north as well. With this project, the city is not getting into that waterway or going up against it. He answered the question “What would it take to build a road over this waterway?” – he stated that it would take major infrastructure with major pipes installed to flow the water underground and the pond would probably have to be removed if that were the case to put a corridor up that alignment. With regard to the water that pools there, it would have to be re-directed to flow under the interstate to the south and that would be costly. Commissioner Camisa inquired if it will be the intent of leaving Lot 4 as a pond for the retention of the water – is that the goal? Planner Stromme stated that Lot 4 does have access to it through the subdivision. In reference to the plat as shown in Exhibit 3 there are easements that connect it in the same way that the lots had access in Mandan Industrial 10th Addition, however now there is just the one lot in the rear. In the event that 32nd Avenue NW is built after the fact, there are conditions that a Special Use Permit facade would have street facing components for architecture and landscaping along the corridor but at that time there is no plan to construct 32nd Avenue NW. Lot 4 will have access to Lots 1-3 at 30th Avenue NW.

Chair Robinson again inquired if there were any comments or questions for Planner Stromme or the engineer or the developer at this time.

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.

Abe Ulmer, Independent Landscaping and Engineering Services, came forward and addressed some of the technical questions presented. He explained the plat will be subdivided into 4 lots with plans to put shop condo units on all 4 lots. There will be common access roads off 30th Avenue for main access and there are also utility easements to get over to Lot 4. There will be a common road through all those property lines with water, storm sewer, etc. There will be a total of six (6) buildings with multiple shops in each building. It is an Industrial Park and the plans will include maximizing that space. This land has been on the market for a long time and it will now be developed and used for shop condos.

Chair Robinson inquired if there were any comments or questions for the engineer or the developer at this time.

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

D. Commission Action

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

Commissioner Leingang motioned to recommend approval of the preliminary plat and Special Use Permit for Mandan Industrial Park 11th Addition. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

3. A request from the Engineering and Planning Department for consideration of a Zoning Ordinance Text Amendment to Sections 101-1-3, 105-3-5, 105-3-6, 105-3-7 and 105-3-12 related to Definitions, R7 – Residential District, R4 – Residential District, R3.2 – Residential District, CB – Commercial District and an Ordinance to enact Section 105-4-7 of the Mandan Municipal Code related to the Lower Heart River Water Resource District Levee Buffer and Overlay District.

A. Staff Report

City Principal Planner Stromme presented.

The City of Mandan has initiated a Zoning Ordinance Text Amendment to Sections 101-1-3, 105-3-5, 105-3-6, 105-3-7, and 105-3-12 related to Definitions, R7 – Residential District, R4 – Residential District, R3.2 – Residential District, CB – Commercial District and an Ordinance to enact Section 105-4-7 of the Mandan Municipal Code related to the Lower Heart River Water Resource District Levee Buffer and Overlay District.

Overview of proposed changes

The proposed amendment would introduce Agency Adult Foster Care as a permitted use in residential zoning districts, remove single-and two-family homes as permitted uses in CB – Commercial, and enact a Lower Heart River Levee Buffer Overlay.

Agency Adult Foster Care

Agency Adult Foster Care is a type of residential foster care in which adults who have experienced life-altering medical events such as traumatic brain injury, stroke, early-onset dementia or similar situations are cared for in home-like settings with no more than four (4) residents. Agency Adult Foster Care facilities and care providers must be licensed by the North Dakota Department of Human Services (NDDHS).

This type of foster care is defined in the ND Administrative Code, Chapter 75-03-21.

Facilities are subject to additional criteria that includes but are not limited to:

- Structural conditions
- Accessibility
- Location in residential settings with reasonable proximity to community services

Permitting group dwellings in Mandan

There are two options for group dwellings permitted in Mandan. First, group dwellings for individuals with developmental disabilities as defined in the NDCC are permitted as secondary uses in many residential zoning districts. Second, “Group Dwellings” as a use group is permitted in CB - Commercial, CA- Commercial, and RM – Residential districts. This use group lists fraternities/sororities, convents and monasteries, boarding houses and group homes licensed by NDDHS as permitted uses.

Agency Adult Foster Care being a facility licensed by NDDHS indicates that it is already a permitted use in portions of the community.

Single and Twin-Family Homes in CB – Commercial – Sec. 105-3-12

Single and Twin-Family residences are presently permitted uses in the CB – Commercial zoning district. The intent of CB – Commercial is to provide a district for commercial development. Single and Twin-Family homes being allowed uses in CB – Commercial allows for the possibility of low-density residential development on properties where plans have indicated commercial development is desired or appropriate.

In 2021, the City approved an ordinance that allows legal-nonconforming or “grandfathered” residential uses to be re-built if destroyed due to unforeseen circumstances and if the structure is located in a district that permits residential uses, such as CB – Commercial. The City also has a procedure in place to re-zone properties and amend plans if a development team is desirous to do so in order to permit low-density residential development.

Lower Heart River Water Resource District – Sec. 105-4-7

The Lower Heart River Water Resource District (LHRWRD) has requested, as part of the Mandan Flood Risk Reduction Project, to have greater involvement in the review and approval of development projects near the Levee infrastructure. This additional review from LHRWRD is required as part of the operations and maintenance requirements of the levee itself. The intent of the district is to bring attention to City staff, residents and the development community that LHRWRD must review projects and that certain restrictions apply on the landward and riverward sides of the levee. There is an exhibit available that applies to these restrictions. This will apply to all new buildings, right of way permitting and any improvements that occur within the levee area to ensure that the LHRWRD is able to review plans for any interference or risk to the levee itself. LHRWRD has reviewed this and no concerns have been brought forward. Staff received a letter requesting the incorporation of Agency Adult Foster Care from NDDHS.

Engineering and Planning Staff recommend approval of the Zoning Ordinance Text Amendment to Sections 101-1-3, 105-3-5, 105-3-6, 105-3-7, 105-3-8, 105-3-12 related to Definitions, R7 – Residential District, R4 – Residential District, R3.2 – Residential District, RMH – Residential District, CB – Commercial District and an Ordinance to enact Section 105-4-7 of the Mandan Municipal Code related to the Lower Heart River Water Resource District Levee Buffer and Overlay District. LHRWRD has a consultant available to answer any questions.

Chair Robinson inquired if there were any comments or questions.

Commissioner Camisa inquired with regard to the agency adult foster home – was there a specific situation in Bismarck that prompted this letter since it cites Bismarck zoning code and districts? Planner Stromme stated that Bismarck and Mandan are reviewing this at the same time. There is a home health agency that wants to open these in Bismarck-Mandan, however, that cannot be done with the current zoning language for both cities. He said that Mandan has the same setup wherein group dwellings are allowed for individuals with developmental disabilities but the code does not allow group dwellings for individuals who have a disability that they have developed after age 22, which is when the state defines developmental age. Thus, they contacted the City of Mandan and the City of Bismarck to address these districts.

Chair Robinson stated that if there are questions for the Lower Heart River Water Resource District, Karli is available (online) to answer them.

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 a 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.

D. Commission Action

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

Commissioner McLean motioned to recommend approval of the Zoning Ordinance Text Amendment to Sections 101-1-3, 105-3-5, 105-3-6, 105-3-7, 105-3-8, 105-3-12 related to Definitions, R7 – Residential District, R4 – Residential District, R3.2 – Residential District, RMH – Residential District, CB – Commercial District and an Ordinance to enact Section 105-4-7 of the Mandan Municipal Code related to the Lower Heart River Water Resource District Levee Buffer and Overlay District. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

ADJOURNMENT

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

The meeting adjourned at 6:19 p.m.