

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, October 24, 2022

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on Monday, October 24, 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, McLean, Frank, Vayda, Gardner and Robinson. Commissioners Absent: Horn, Helbling, Liepitz, Camisa.

MINUTES

Commissioner McLean motioned to approve the September 26, 2022 minutes as presented. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Victor Fleck for consideration of a final plat to be titled Vic Fleck Subdivision. Said property is all of Lot 2 of Lot E Outlot E, Part of Lot 3 of Lot E and All of Lot A of Lots 3 & 4, in the SW ¼ of Section 29, Township 139N, Range 81W. The property is located on Sunny Road South.

A. Staff Report

City Principal Planner Stromme presented.

Victor Fleck requested consideration of a final plat for a subdivision to be titled Vic Fleck Addition. The property is located west of Mandan in the extraterritorial area on Sunny Road South.

Property History

The properties were developed in the 1970s. They were rezoned from R7 – Residential to CB – Commercial in 2011 and 2020 respectively. The primary use of the property is trucking of excavated materials. It is located in the floodplain. They are not served by municipal utility services (city water, sewer).

Final Plat

The proposed subdivision plat is 20.62 acres in size and contains one lot in one block. The property is in a designated AE – Floodplain and any development on the property must conform with the City Floodplain Development Ordinance. Access is proposed to come from Sunny Road South.

Adjacent Zoning and Land Use

Adjacent properties are zoned R7 – Residential and MA – Industrial. The future land use designation for this property is Commercial and High Density Residential. The current zoning would permit both in a future development scenario.

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 located in the Special Flood Hazard Area but is proposed to be constructed in accordance with the Floodplain Development Ordinance and therefore will not 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.
7. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

Agency & Other Department Comments

Building construction on this property must conform with City Ordinances related to floodplain development.

Planning Staff Comments

- The primary flood risk on this property is believed to come from the Heart River Oxbow located directly south of the subject parcel. Flooding events on the Heart River system are what cause specific concern.
- A total of eleven (11) letters were sent to adjoining property owners related to the request. There have not been any comments received or opposition to the request of a final plat.
- The signature lines need correcting to reflect City Board approval.

Planner Stromme stated that the Planning Department Office recommended approval of the final plat for Vic Fleck Subdivision. Surveyor Greg Johnson was available to answer any questions regarding this project.

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 of a final plat to be titled Vic Fleck Subdivision.

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 the request of a final plat to be titled Vic Fleck Subdivision. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner McLean motioned to recommend approval of the final plat to be titled Vic Fleck Subdivision. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

2. A request from Dustin & Jennifer Leingang for consideration of a building setback variance and minor plat to be named Leingang Addition. Said property is Auditor's Lot 9, Block 9, Mead's Addition of the SE ¼ Section 28, Township 139N, Range 81W. The property is located at 205 & 207 8th Avenue NW.

A. Staff Report

City Principal Planner Stromme presented.

Dustin & Jennifer Leingang request consideration of a variance from Sec. 105-3-9 (10) of the City Code of Ordinances related to RM - Residential; Rear yard setback. The property is located in west central Mandan, on the west side of 8th Avenue NW between 1st and 2nd Streets Northwest.

Property History

Mead's Addition was platted in 1881. There are two homes on the property. Pursuant to the City Assessing property cards, the two homes on the lot were constructed in 1937. The homes are over twenty feet (20') apart.

Requested Variance

Using the subject plat for Leingang Addition, the applicant seeks to split the property into two to allow the homes to be owned separately on individual lots. Applying the RM – Residential rear yard setback of ten feet (10') to this property, the location of a new property line to split the properties would be in a location unfavorable to the applicant based on existing lot features. The variance, if granted through the approval of Leingang Addition, would permit a reduction in the rear yard setback from ten feet (10') to three feet (3') for this property. Exhibit 4 indicates the location of property features of the proposed property line.

Minor Plat

The proposed plat is 8,414 sf (.19 acres) and has two (2) lots. Lot 1 is shown to be 4,333 sf and Lot 2 is 4,081 sf.

Adjacent Zoning and Land Use

Adjacent properties are zoned DF – Downtown Fringe and are residential in nature. The City Future Land Use Plan recommends medium-density residential development.

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 DF – Downtown fringe district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Minor Plat

1. All requirements for approval of a minor subdivision plat have been met.
2. The proposed subdivision is generally consistent with the intent and purpose of the zoning ordinance.
3. The proposed subdivision is consistent with the Future Land Use Plan, other adopted plans and policies, as well as accepted planning practice.
4. The proposed subdivision would not adversely affect public health, safety and general welfare.

Agency & Other Department Comments

Staff has not received comments related to this item. Seventeen (17) letters were sent to adjacent property owners notifying them of the request. Pursuant to the Public Works Department, a separate water curb stop may be needed if a separate lot is created.

Engineering & Planning Recommendation

Planner Stromme stated that the Planning Department recommends review of the applicants request and Findings of Fact, identifying a hardship and modifying the Findings of Fact to support the motion of the Board. Page 24 of the agenda packet includes a guide to assist with review, criteria and motions related to variances.

Planner Stromme explained that included in Exhibit 2, is an applicant statement related to the property and the application of the code on the property and why they are requesting a variance. That would be considered their statement of hardship as to why they need a setback variance from the city's zoning code.

Chair Robison inquired what would happen if one of these structures were to burn down since the lots are broke up into about 4,200 sq. ft.? Planner Stromme explained that in 2021 the city code was amended related to legal non-conformity, existing uses – specifically residential uses – to ensure that legally non-conforming residential uses would be allowed to be rebuilt because of a concern that residents were not able to obtain mortgages on properties with non-conforming setbacks. He said that it is his understanding that as long as a new structure would be able to meet the code, however, he recommended checking with the City Attorney on this matter, however he believes they would be able to be rebuilt under the code

that was added because it is a city action that is permitting the split to occur. All the property lines that are being reviewed, would be able to be rebuilt in that location because of the code. The one that he is not positive about is the one that that will be added tonight. He reiterated the city code will basically allow these two to be rebuilt as is – the nuance would be the property line that is being added, wherein, he will obtain attorney consultation on that item.

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 from Dustin & Jennifer Leingang for consideration of a building setback variance and minor plat to be named Leingang Addition.

Dustin Leingang came forward and stated he is the current landowner of the property. He presented photos to help illustrate why the property line and why the request for hardship and the request for acceptance for this is being made. Both properties are distinctly separate properties with a clear delineation from property A to property B. Toman Engineering was available to answer questions.

Commissioner McLean inquired of Mr. Leingang if he plans to sell one of the residences? Mr. Leingang replied that the current tenants on the alley side inquired about possibilities of purchasing the house they live in. There is no Purchase Agreement in place and there is nothing contingent on this happening, however, he realizes he is unable to do anything with either property unless the two properties are split because they are one lot. That is the reason for the origination of this process.

Commissioner Gardner inquired if there would be a subdivision of the two homes – would there be a garage or car port built? Mr. Leingang replied there is no planned construction, this request is simply to separate the properties legally according to code regulations.

Everything else is recognized as being separate as it is today, other than the plat.

Commissioner Gardner inquired if there are separate mailing addresses? Leingang replied yes they are separate addresses and there are separate utilities and garbage, etc. and they are recognized as if they are two separate properties except for the common lot they sit on.

Commissioner Gardner inquired of Planner Stromme – If the action is that a line is being drawn basically delineating the two properties, there is no concern about fire? Planner Stromme replied that the concerns are the additional structures that would be conformed in a setback location that would be required, so there is a concern with the recommendation of adoption of the code that 10 feet be the proper setback. The Building and Fire Departments in previous instances stated there have been concerns with setbacks and things like fire, however, in the event of a structure being placed, there are things that can be done to promote safety that could be accommodated.

Commissioner Frank commented that there are properties throughout the community like this that were constructed in the past. She inquired if anyone who is looking to create this type of setup in the future - if there would be an impact on construction if the city allowed these types of existing structures to be built and then later split? Planner Stromme explained that one of the potential routes to permit this property would have been the accessory dwelling unit and he does not believe the city will see many lot splits primarily because the underlying

zoning might permit the lot splits based on lot size. He does not anticipate many of these requests to come forward. If these types of actions continue, he believes it will be a continuation of working through the current property situations.

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 from Dustin & Jennifer Leingang for consideration of a building setback variance and minor plat to be named Leingang Addition. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner McLean inquired if the city will be setting a precedence with a 3-foot setback of this is permitted? What if a structure were to burn down and they want to rebuild? Would they have to conform to a regular setback? Planner Stromme stated that there is a provision in the Mandan City Code that allows legal non-conforming residential uses to be rebuilt as they were. If there was a less than normal setback of a structure that could be rebuilt, the city attorney would be asked if the rear property line also is included in that property or not, as it is not necessarily a legal non-conforming aspect, it is something that's awarded when it would be approved. He said he is not clear on an answer however he will request the city attorney to research it and provide comments back to the Commissioners. Commissioner McLean inquired what would happen if there is a situation at the alley access for fire and rescue? Planner Stromme replied that he does not believe there would be any change in the functional operation of the properties whether it's day to day or in an emergency situation. The change requested is limited to the addition of a property line.

Chair Robinson commented that the plat being reviewed does not show the actual footage between the two structures. He inquired as to what that is. Planner Stromme stated there was an excess of 20 feet, minus the deck, which is 25 feet.

Chair Robinson commented that presently the work is around the car port and storage building which are primitive and utility services. If the city ignored those two structures, would it be about 10 feet? Planner Stromme stated that they would be able to draw a 10-foot setback for both properties however the structures would not be able to straddle and they would also need to be 10-feet from the line. That could be a challenge to place those structures on the property at a 10-foot setback.

Commissioner McLean inquired if the car port were to be replaced could it be replaced with a full-size garage? Planner Stromme stated that providing that the structure would be an allowed accessory use (shop, garage, shed) and meets the set back and not violate any city code, it could be rebuilt and not be required to be rebuilt exactly as it stands today.

Chair Robinson inquired if there were any comments or questions from the Commission. He stated that he is familiar with the property area and although the situation is not perfect, it's probably the most logical scenario, as presented, without moving anything. Commissioner Frank inquired that even though the structures are encroaching on the setback, do they still have access distance from the adjacent structure? Planner Stromme referred to Exhibit 4, and

stated that he understands all the measurements would result in adequate distance. Fire Chief Nardello and Building Official Singer have indicated that 5-feet is reasonable between the one-story structures and anything less than that, they prefer to have fire-proofing per fire and building codes. With that understanding, he believes the distance between the accessory structures and homes is satisfactory.

Commissioner Frank moved to recommend approval of the variance from Sec. 105-3-9 (10) of the City Code of Ordinances related to RM - Residential; Rear yard setback reduce the required rear yard setback on this property from ten feet (10') to three feet (3') feet due to the following hardship as specified in the request, more specifically, Findings of Fact, Variance (1) The need for a variance based on special circumstances or conditions unique to this specific parcel of land; (2) Request a variance is the minimum variance that would accomplish the relief sought by the applicants. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

OTHER BUSINESS

1. Introduction of Land Use Plan Amendment in NW Mandan.

Planner Stromme stated that he has prepared an introduction of a Land Use Plan Amendment that city staff has been working on in northwest Mandan. He presented an exhibit that was provided to all commissioner members prior to the meeting. He reviewed the following main points related to the amendment: (i) Access Management for the freeway near interchanges; and (ii) Allowable Access Spacing Near Interchanges.

Planner Stromme stated that if the city is interested in having an interstate access point, there are rules outlined for that process by the DOT. For context, he said this project is planned for year 2045, or later, however, he said he does not want to lose a chance in the future wherein these are uncertainties, however they are likelihoods. This presentation is not brought for a vote, rather as a brief introduction as a future project. It may be brought in the future as an action item followed by public involvement.

Commissioner Gardner said he would be interested in hearing from property owners that are affected, in particular, what their thoughts are in order to extend the road. Planner Stromme said that as with other processes conducted by the city there will be public involvement and at a minimum there would be letters sent to the property owners that have any change in future land use designation or change in transportation that they may need to accommodate in the development scenario. All the parcels within the project will be reviewed by the developers and farmers, etc. The action would be to amend the Future Land Use Plan map but specifically only to amend the transportation network component of it. The request would be to amend the location of the arterial road from one area to another and add a recommended connection point to preserve the right of way.

2. Chair Robinson extended a welcome to Will Gardner as the newest member appointed to the Planning and Zoning Commission.

ADJOURNMENT

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

The meeting adjourned at 6:20 p.m.