

ORDINANCE NO. 1335

An Ordinance to Amend and Re-enact Sec. 101-1-13 related to Amendments, Amend and Re-enact Sec. 105-1-5 related to Special Uses, Amend and Re-enact Sec. 105-1-12 related to Board of Adjustment, and Remove Sec. 105-3-1 related to Applicability of Standards of the Mandan Code of Ordinances

WHEREAS, Clarity of procedure is important to the applicant, city staff overseeing and facilitating the process, and general public to ensure the integrity of due process; and

WHEREAS, Consolidating procedures of land use applications related to zoning creates efficiency for staff by reducing the amount of labor resources required to explain said procedure to prospective applicants; and

WHEREAS, Future staff may more easily understand the various land use application procedures related to zoning if it is clearly outlined in a step-by-step procedure; and

WHEREAS, Various nuances of each land use application procedure are more easily compared when consolidated in one Section and share the same organizational structure.

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

Section 1. Sec. 105-1-5 is Amended and Re-enacted.

Sec. 105-1-5. - Use Standards.

- (a) *Purpose.* In order to carry out the purposes of this chapter, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area or other reasons, include additional standards to ensure the health, safety, and overall harmony on and surrounding a specific site.
- (b) *Airports and heliports.* An airport may be permitted as a special use in an A agricultural district in the extraterritorial zone and a heliport may be permitted as a special use associated with a medical facility within the zoning jurisdiction of the city, provided that:
 - (1) The area is sufficient to meet the federal requirements for the class of airport or heliport proposed;
 - (2) There are no existing flight obstructions, such as towers, chimneys, or other tall structures, or natural obstructions outside the boundaries of the proposed airport or heliport which would fall within the approach zone to any of the proposed runways or landing strips of the airport or heliport;
 - (3) There is sufficient distance between the end of each useable landing strip and the airport boundary to satisfy the requirements of the federal aviation administration or any other appropriate authority. In cases where air rights or easements have been acquired from the

owners of abutting properties, in which approach zones may fall, satisfactory evidence thereof shall be submitted with the application;

- (4) Any building, hangar or other structure shall be at least 100 feet from any street or property boundary;
 - (5) Adequate space for off-street parking has been provided. A traffic study must be submitted to document the need for the number of spaces proposed; and
 - (6) The application for authorization of an airport or heliport shall be accompanied by plans meeting the requirements of the FAA, other regulatory agencies and the city.
- (c) *Cemetery.* A cemetery, mausoleum, or columbarium may be permitted in an industrial or A district as a special use, provided that:
- (1) No graves shall be located less than 100 feet distant from any property line;
 - (2) There shall be a strip at least 75 feet in width adjacent to all boundaries of the cemetery landscaped and maintained as a green area;
 - (3) In any cemetery in which there will be permitted monuments and grave markers rising above the surface of the ground, the green area shall include a dense evergreen hedge at least six feet in height; and
 - (4) No mausoleum, columbarium, or cemetery chapel shall be erected within 200 feet of any boundary of the lot or parcel on which it is located.
- (d) *Golf driving range or miniature golf course.* A golf driving range or miniature golf course may be permitted in an A or industrial district as a special use, provided that:
- (1) The area within 500 feet of all boundaries of the lot is not developed in residences to a greater density than one family per acre;
 - (2) Any flood-lights used to illuminate the premises are so directed and shielded as to prevent the direct lighting area from extending beyond the property boundary;
 - (3) When the area within 500 feet of the property boundary is undeveloped, any approval is limited to one year and must be renewed annually. If residential development exceeding a density of one dwelling unit per acre is approved within this 500-foot area, the approval for this use may be withdrawn unless all property owners within the 500-foot area sign written consents to allow the use to continue on a year to year basis.
- (e) *Fire or emergency medical response.* A facility providing fire and/or emergency medical response services may be permitted in any zoning district as a special use, provided that:
- (1) Ingress and egress from the street shall be so designed and constructed as to provide safe traffic movement. A demand activated traffic control signal for emergency vehicle egress from the site may be required,
 - (2) Sufficient parking shall be provided to accommodate the maximum number of personnel per shift plus at least two visitor spaces; and,
 - (3) If the use is approved, landscaping, signage and design of the building exterior shall be reviewed and approved by the Mandan Architectural Review Commission.

- (f) *Day care center.* A day care center is a facility providing services to more than 12 children or any number of adults. A day care center requires a special use approval and must comply with the following criteria:
- (1) The facility must receive state approval before an occupancy permit can be issued;
 - (2) For a facility catering to children, each building shall provide not less than 35 square feet of interior play area per child;
 - (3) For a facility catering to children, a fenced outdoor play area of not less than 75 square feet per child shall be provided that is located no closer than ten feet to an adjoining residential lot;
 - (4) For a facility catering to adults, there shall be an outdoor lawn area and covered porch offering either active recreation or passive activities for groups or individuals;
 - (5) As a minimum, onsite parking shall be provided at the ratio of one space per manager and employee per shift plus one space for each 12 clients; and
 - (6) Drop off and pickup of clients shall be in an area off the public street that is separate from parking spaces.
- (g) *Correctional facility.* A correctional facility may be permitted in an industrial or A district as a special use, provided that:
- (1) The facility fronts on an arterial street;
 - (2) There are no churches, schools or residentially developed property within 500 feet;
 - (3) The primary illumination field for exterior lighting shall not extend beyond the property boundary;
 - (4) No building shall be closer than 35 feet to any property line; and
 - (5) As a minimum, onsite parking shall be provided at a ratio of one space for each employee per shift plus one space per four inmates.
- (h) *Drug or alcohol outpatient treatment or counseling facility.* A drug or alcohol outpatient treatment or counseling facility may be permitted as a special use in a regional commercial, industrial or A district and must comply with the following criteria:
- (1) The facility fronts on an arterial street;
 - (2) As a minimum, onsite parking shall be provided at a ratio of one space for each employee per shift plus one space per two clients per hour;
 - (3) Hours of operation are limited to between 6:00 a.m. and 8:00 p.m.;
 - (4) The facility is no closer than 1,000 feet to a school, daycare facility or residentially developed property; and
 - (5) The facility is no closer than 500 feet to an establishment selling alcohol.
- (k) *[Reserved.]*

(Code 1957, § 14-0210; Code 1994, § 21-03-08; Ord. No. 534, § 1, 1976; Ord. No. 535, § 4, 1976; Ord. No. 610, § 1, 1979; Ord. No. 636, § 2, 1981; Ord. No. 657, § 2, 1982; Ord. No. 923, §

3, 7-17-2001; Ord. No. 963, § 7, 6-17-2003; Ord. No. 1223, § 7, 11-3-2015; Ord. No. 1299, §§ 3, 4, 4-16-2019; Ord. No. 1320, § 1, 9-3-2019)

Section 2. Sec. 105-1-12 is Amended and Re-enacted.

Sec. 105-1-12. - Board of Adjustment.

- (a) The board of city commissioners may create a board of adjustment as authorized by N.D.C.C. or may perform the functions themselves.
- (b) The board of adjustment is an administrative board whose powers and duties are limited generally by state laws and particularly by the powers and duties set forth in this section. The board of adjustment shall not have the power to amend this chapter on zoning, nor to permit nor prohibit any actions which accomplish an amendment of this chapter on zoning, nor to permit any action nor fail to prohibit any action which would violate this chapter. However, it is the declared intent of this section that any actions taken by the board of adjustment, in full compliance with the provisions of this section, shall be deemed to be administrative actions and shall not be interpreted as unauthorized amendments to the chapter. In addition to the powers provided by law, the board of adjustment shall have the following powers and duties:
 - (1) Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this chapter in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the chapter would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.
 - (2) Conditional variance. In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of this chapter or preserve the neighborhood or general welfare from injury.
 - (3) Allocation of unlisted uses. Upon application of a property owner, or upon a request of the building official or other administrative official or of any official, agency or board of the city, or on its own initiative, the board of adjustment shall add to any use group established by section 105-1-4, any other similar use which conforms to the conditions set forth in the special finding required and listed in this subsection:
 - a. Such use is not listed in any other use group, nor is it listed individually as a permitted use.
 - b. Such use is more appropriate in the use group to which it is added than in any other use group.
 - c. Such use conforms to the basic characteristics of the use group to which it is added as set forth in the general description of the use group.
 - d. Such use does not adversely affect the character of any of the districts in which the use group to which it is added is permitted.

- e. Such use is not likely to create any more traffic than the other uses listed in the use group to which it is added, nor does it create any more offensive noise, vibration, dust, heat, smoke, odor, glare, health or safety hazard or other objectionable influence than the minimum amount normally resulting from the other uses listed in the use group to which it is added.
 - f. When any use has been added to any use group in accordance with the procedure set forth in this section, such use shall thereafter be deemed to be permitted in any district in which such use group is permitted, and to be prohibited from any district in which such use group is prohibited. Such use shall be added to the use group in the published text of this chapter at the first convenient opportunity, with a notation indicating that the addition was made in accordance with this section.
- (4) Renewal of certificate of occupancy for nonconforming use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of section 105-1-1. In granting such renewal, the board of adjustment shall determine that the temporary continuation will not be injurious to the neighborhood, nor to the public welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension if such extension were refused. The board of adjustment may refuse to grant an extension to the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than 15 days prior to the expiration of the original certificate of occupancy.
 - (5) Renewal of automatically revoked building permit. Upon appeal by any person holding a building permit automatically revoked by the provisions of this Code, the board of adjustment shall hear and determine whether or not such revoked building permit will be renewed. The board of adjustment shall authorize such renewal only where it specifically finds:
 - a. Construction of the building has, in fact, been started.
 - b. Substantial expenditures have been made for such construction.
 - c. The plans for the building and actual construction of the building are in full compliance with the zoning ordinances in effect at the date of issuance of the building permit and in full compliance with the building code and any other city ordinances.
 - (6) Off-street parking. The board of adjustment shall, upon application, hear and decide any question relating to the decrease of required off-street parking or off-street loading spaces, as set forth in section 105-1-6.
 - (7) Airport zoning. The board of adjustment shall have all powers and duties granted to it by this chapter relating to airport zoning regulation.
 - (8) Recommendations to planning and zoning commission. The board of adjustment is authorized to recommend to the city planning and zoning commission, for study or action, any changes or amendments to the text or district zoning maps that the board finds desirable. The planning and zoning commission shall consider such recommendations and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.

- (9) Special permit for large-scale development. The board of adjustment shall hear and pass upon an application for a special permit for a large-scale development in accordance with the provisions of section 105-4-5.
- (10) Miscellaneous powers and duties. The board of adjustment shall have such other powers and duties as may be authorized by this chapter, or any amendment thereto.
- (11) Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of this state, this chapter, or any other ordinance of the city, as it may deem necessary to carry out the provisions of this chapter.

(Code 1957, § 14-0224; Code 1994, § 21-06-02)

Section 3. Sec. 105-1-13 is Amended and Re-enacted.

Sec. 105-1-13. - Zoning Application Procedures.

(a) General Provisions.

- (1) Purpose. The following Section outlines the requirements and procedures for land use applications that fall within the purview of Chapter 105. Specific application and procedural requirements for planned unit developments and large-scale developments shall follow those provided within Sec. 105-4-3 and Sec. 105-4-5 respectively.
- (2) Definitions. For the meanings of zoning terms or words not found in Section 101-1-3 related to definitions, the city staff shall rely upon the latest A Planners Dictionary, edited by Michael Davidson and Fay Dolnick, American Planning Association and Planning Advisory Service, for interpretation purposes.
- (3) Complete Application. A complete application shall include the following:
 - a. Development application as established by the Engineering and Planning Department.
 - b. Fee, as established by the board of city commissioners.
 - c. Site plan.
 - d. Letter of intent containing:
 1. A summary of the purpose for the application; and
 2. How negative externalities resulting from the change in land use will be addressed.

- e. Additional submittals as required by the respective land use application that falls within the purview of this Section.
- f. Additional plans, studies, or other information as may be required from time to time from the Planning and Zoning Commission or city staff.

(4) Period of Review. The planning office shall review a submitted application within ten (10) business days to determine whether an application is complete. If the application is determined to be a complete application, the planning office shall notify the applicant or applicant representative of the determination and the application shall be considered accepted. If the application is determined to be incomplete, the planning office shall notify the applicant or applicant representative of the missing components necessary to consider the application complete.

(b) Zoning Ordinance Map Amendment. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the board of city commissioners may amend, supplement, or change the zoning boundaries or classification of property on the zoning map as set forth in this Section.

(1) Initiation of Amendments. A proposed zoning map amendment as described in Section 105-2-2 may be initiated by the board of city commissioners upon its own motion, or upon receipt of a request therefor from the Planning and Zoning Commission, or upon receipt of a petition therefor from any interested person or their agents.

(2) Additional Submittals. A zoning ordinance map amendment application shall include the following additional submittals:

- a. Map or written statement evidencing conformity with the future land use map of the City of Mandan Land Use and Transportation Plan and/or any corresponding goals, objectives, policies, and other information contained therein. Evidence of conformity shall include:
 - 1. Where the requested zoning district(s) aligns with the future land use map designation(s); OR
 - 2. Where two or more future land use map designations apply to an area that is part of the application for a zoning ordinance map amendment and only one future land use map designation aligns with the requested zoning district, the applicant shall outline how the application also aligns with the goals, objectives, policies, and other information contained within the City of Mandan Land Use and Transportation Plan; OR

recommend approval with restrictions, recommend denial, or table the public hearing to a future date. A recommendation shall include or reference findings of fact related to the application and forwarded to the board of city commissioners. A motion to table the application to a future date shall be limited to no longer than 60 days.

- (6) City Commission Public Hearing Required – First Consideration. The board of city commissioners shall hold a public hearing no sooner than is possible to follow the public hearing noticing requirements. The public hearing shall be the first consideration of the ordinance. The board of city commissioners may approve, approve with restrictions, deny, or table the public hearing to a future date. A decision shall include or reference findings of fact related to the application. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the application is final and no second consideration is required. If substantial changes to the zoning map amendment are required the public hearing shall be repeated and follow the public hearing noticing requirements.
- (7) City Commission Public Meeting Required – Second Consideration. The board of city commissioners shall hold a public meeting no sooner than ten (10) days following the first consideration of the zoning ordinance map amendment. The zoning ordinance map amendment shall not substantially differ from that presented at the preceding public hearing. The board of city commissioners may, at their discretion, hear public testimony related to the application. The board of city commissioners may approve, approve with restrictions, deny, or table the public hearing to a future date. A decision shall include or reference findings of fact related to the application. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the application is final.
- (8) Required Vote for Passage. If a protest against an amendment is signed by the owners of twenty percent or more:
 - a. Of the area of the lots included in such proposed change; or
 - b. Of the area adjacent, extending one-hundred-fifty (150) feet from the area to be changed, excluding the width of streets,the amendment shall not become effective except by the favorable vote of four of the five members of the governing body of the city.
- (9) Restrictions. Zoning ordinance map amendments which list allowable uses shall not be construed to be permission to conduct uses in perpetuity. Listed allowable uses shall be further limited by any zoning ordinance text amendment that affects, excludes, alters, or relates to a use contained in said list. The required land use

application procedure shall be followed per Chapter 105 DISTRICT REGULATIONS (ZONING) at the time of initiation of any use.

(10) Evaluative Criteria. In order to provide a favorable recommendation by the Planning and Zoning Commission or final decision by the board of city commissioners, the following must be considered:

a. How the proposed zoning district aligns with the City of Mandan Land Use and Transportation Plan and other plans as may be adopted by the board of city commissioners. Alignment includes:

1. Fulfilling the goals, objectives, and policies of the future land use plan;
2. Fulfilling the goals, objectives, and policies of other plans as may be adopted by the city; and
3. Fulfillment of the zoning-future land use crosswalk where one is adopted by the planning and zoning commission.

(c) Zoning Ordinance Text Amendment. Whenever the public necessity, convenience, general welfare or good zoning practice requires, the board of city commissioners may amend, supplement, or change the regulations in the zoning ordinance as set forth in this Section.

(1) Initiation of Amendments. A proposed zoning text amendment may be initiated by the board of city commissioners, Planning and Zoning Commission, the planning office, or any interested person or their agent.

(2) Additional Submittals. A zoning text amendment application shall include the following additional submittals:

- a. Summary of the goal(s) intended to be achieved by the amendment; and
- b. Word document with tracked changes enabled, showing all mark-up of the existing ordinance and proposed changes.

(3) Complete Application Received. A complete application shall be received no less than 30 days prior to the desired planning and zoning commission meeting date.

(4) Public Hearing Noticing Requirements. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:

- a. The time and place of the hearing.

- b. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
 - c. A statement of the times at which the application will be available to the public for inspection and copying at the office of the city auditor or his/her designee.
- (5) Planning and Zoning Public Hearing Required. The planning and zoning commission shall hold a public hearing to review the application for a zoning ordinance text amendment. The planning and zoning commission may recommend approval, recommend approval subject to changes, recommend denial, or table the public hearing to a future date. A motion to table the application to a future date is limited to no longer than 60 days.
- (6) City Commission Public Hearing Required – First Consideration. The board of city commissioners shall hold a public hearing no sooner than is possible to follow the public hearing noticing requirements. The public hearing shall be the first consideration of the ordinance. The board of city commissioners may approve, approve subject to changes, deny, or table the public hearing to a future date. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the application is final and no second consideration is required. If substantial changes to the ordinance are required the public hearing shall be repeated and follow the public hearing noticing requirements.
- (7) City Commission Public Meeting Required – Second Consideration. The board of city commissioners shall hold a public meeting no sooner than ten (10) days following the first consideration of the zoning ordinance text amendment. The zoning ordinance text amendment shall not substantially differ from that presented at the preceding public hearing. The board of city commissioners may, at their discretion, hear public testimony related to the application. The board of city commissioners may approve, approve subject to changes, deny, or table the public hearing to a future date. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the application is final.
- (8) Evaluative Criteria. In order to provide a favorable recommendation by the Planning and Zoning Commission or final decision by the board of city commissioners, the following must be considered:
 - a. How the proposed zoning ordinance text amendment serves the public interest; and
 - b. How the proposed zoning ordinance text amendment aligns with the goals, objectives, and policies outlined in the City of Mandan Land Use and

Transportation Plan and other plans as may be adopted by the board of city commissioners.

(d) Conditional/Special Use Permit. In order to carry out the purposes of this chapter, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area or other reasons, be reviewed by the planning and zoning commission prior to the board voting on whether or not to approve the use at a specific site.

(1) Additional Submittals. A special or conditional use permit application shall include the following additional submittals:

a. An answer with explanation for each of the following questions:

1. Will the proposed use be designed, constructed, operated, and maintained so as to be compatible in appearance with the existing or intended character of the neighborhood?
2. Will the proposed use involve activities, processes, materials, equipment, or conditions of operation that will be incompatible with the neighborhood due to the production of traffic, noise, smoke, fumes, glare, or odors?
3. Will the hours of operation of the proposed use be different than the adjacent uses?
4. Will the proposed use require exterior lighting of a type and intensity greater than the adjacent uses?
5. Will the site of the proposed use have sufficient area to provide the parking required for the use?
6. Will the proposed use require adjustments to the normal lot size, height, and setback requirements of the district?

(2) Complete Application Received. A complete application shall be received no less than 30 days prior to the desired planning and zoning commission meeting date.

(3) Public Hearing Noticing Requirements. Notice of the hearing must be published at least ten (10) days before the time set for the hearing in the official newspaper of the city. Property owners within five-hundred (500) feet of the boundary of the area of the proposed conditional use shall be notified by mail. The property owner notice requirement shall be considered to be met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification. The notice must contain the following items:

a. The time and place of the hearing.

- b. A description of the nature, scope, and purpose of development requiring a special use permit.
- c. A statement of the times at which the application will be available to the public for inspection and copying at the office of the city auditor or his/her designee.

(4) Planning and Zoning Public Hearing Required. The planning and zoning commission shall hold a public hearing to review the application for a special use permit. The planning and zoning commission may recommend approval, recommend approval with conditions, deny, or table the public hearing to a future date. A recommendation to approve or approve with conditions shall include or reference findings of fact related to the application and forwarded to the board of city commissioners. Conditions of approval shall be related and roughly proportional to mitigate negative externalities affecting nearby property owners and the general public and to fulfill the intent of the adopted plans of the City. A decision to table the application to a future date shall be limited to no longer than 60 days. A decision to deny is final.

(5) City Commission Ratification of Approval Required. If the planning and zoning commission recommends to approve or approve with conditions and no appeal is filed as provided in this Section, the action by the board of city commissioners may be by consent. The board of city commissioners may approve, approve with conditions, deny, or table the item to a future date. Conditions of approval shall be related and roughly proportional to mitigate negative externalities affecting nearby property owners and the general public and to fulfill the intent of the adopted plans of the City. A motion to table the item to a future date shall be limited to no longer than 60 days. A decision to deny is final.

(6) Evaluative Criteria. In order to provide a favorable recommendation by the planning and zoning commission or final decision by the board of city commissioners, the following must be considered:

- a. The proposed use is in harmony with the purpose and intent of this chapter;
- b. The proposed use is not in conflict with the adopted comprehensive plan of the city;
- c. The proposed use will not adversely affect the health, safety, and general welfare of the public and the workers and residents in the area;
- d. The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood;

- e. The proposed use meets all appropriate regulations for the district in which it will be located;
- f. The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community;
- g. The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses; and
- h. The proposed use includes adequate provisions for those individuals who are mobility impaired.

(7) Permit Expiration. Conditional/special use approval is valid for one year. Should a building permit not be issued within one year of receiving special/conditional use approval from the city commission, the approval will lapse. An extension may be granted by the board of city commissioners upon receipt of a written request prior to the one-year expiration.

(e) Zoning Variance. On appeal from an order, requirement, decision, or determination made by an administrative official, the board of city commissioners may vary or adjust the strict application of any of the requirements of this chapter in the case of an exceptionally irregular, narrow, shallow, or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the chapter would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

(1) Additional Submittals. A zoning variance application shall include the following additional submittals:

- a. Detailed statement including the following:
 - 1. The circumstances or conditions applying to the land or buildings for which the variance is sought;
 - 2. How the applicant is deprived of a reasonable use of said land or building;
 - 3. How the grant of a variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - 4. The minimum variance that will accomplish the relief sought.

(2) Complete Application Received. A complete application shall be received no less than 30 days prior to the desired planning and zoning commission meeting date.

- (3) Public Hearing Noticing Requirements. Notice of the hearing must be published at least ten (10) days before the time set for the hearing in the official newspaper of the city. Property owners within one-hundred-fifty (150) feet of the boundary of the area of the proposed variance shall be notified by mail. The property owner notice requirement shall be considered to be met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification. The notice must contain the following items:
- a. The time and place of the hearing.
 - b. A description of the nature, scope, and purpose of the variance request.
 - c. A statement of the times at which the application will be available to the public for inspection and copying at the office of the city auditor or his/her designee.
- (4) Planning and Zoning Public Hearing Required. The planning and zoning commission shall hold a public hearing to review the application for a variance. The planning and zoning commission may recommend approval, recommend approval with conditions, recommend denial, or table the public hearing to a future date. A recommendation shall include or reference findings of fact related to the application and forwarded to the board of city commissioners. Conditions of approval shall be related and roughly proportional to mitigate negative externalities affecting nearby property owners and the general public and to fulfill the intent of the adopted plans of the City. A motion to table the application to a future date shall be limited to no longer than 60 days.
- (5) City Commission Public Hearing Required. The board of city commissioners shall hold a public hearing no sooner than is possible to follow the public hearing noticing requirements. The board of city commissioners may approve, approve with conditions, deny, or table the public hearing to a future date. Conditions of approval shall be related and roughly proportional to mitigate negative externalities affecting nearby property owners and the general public and to fulfill the intent of the adopted plans of the City. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the variance is final.
- (6) Evaluative Criteria. No adjustment in the strict application of any provisions of this chapter shall be recommended by the planning and zoning commission or granted by the board of city commissioners unless it finds that:
- a. There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood,

and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not;

- b. For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant; and
- c. The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(f) Future Land Use Map/Plan Amendment.

- (1) Initiation of Amendments. A proposed future land use map/plan amendment may be initiated by the board of city commissioners upon its own motion, or upon receipt of a request therefor from the Planning and Zoning Commission, or upon receipt of a petition therefor from any interested person or their agents. The amendments are limited to the planned land uses for a subject property and do not include amendments to other components of the Land Use and Transportation Plan or other plans that have been adopted by the city.
- (2) Additional Submittals. A future land use map amendment application shall include the following additional submittals:
 - a. An explanation of how the application aligns with the goals, objectives, policies, and other information contained within the City of Mandan Land Use and Transportation Plan and other plans adopted by the city; and
 - b. How any amendment, if approved, would not further create potential for disharmonious adjacent land uses; and
 - c. An ESRI shapefile (.shp) of the future land use map amendment area and projected in spatial reference well-known ID (WKID) 102721.
- (3) Complete Application Received. A complete application shall be received no less than 30 days prior to the desired planning and zoning commission meeting date.
- (4) Public Hearing Noticing Requirements. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. Property owners within five-hundred (500) feet of the

boundary of the area of the proposed amendment shall be notified by mail. The property owner notice requirement shall be considered to be met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification. The notice must contain the following items:

- a. The time and place of the hearing.
- b. A description of any property involved in any future land use map amendment, by street address if streets have been platted or designated in the area affected.
- c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
- d. A statement of the times at which the application will be available to the public for inspection and copying at the office of the city auditor or his/her designee.

(5) Planning and Zoning Public Hearing Required. The planning and zoning commission shall hold a public hearing to review the application for a future land use map amendment. The planning and zoning commission may approve, deny, or table the public hearing to a future date. The adoption of the amendment shall be by a resolution of the commission carried by the affirmative votes of not less than two-thirds of the members thereof. An attested copy of the amendment shall be certified to the governing body of the municipality, if approved. A decision shall include or reference findings of fact related to the application. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the land use amendment or failure to approve the amendment by the affirmative of at least two-thirds of the members is final.

(6) City Commission Public Hearing Required. The board of city commissioners shall hold a public hearing no sooner than is possible to follow the public hearing noticing requirements. No change or addition to the master plan or any part of it as adopted by the planning commission shall be made by the governing body until the proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of the commission's report is filed with the governing body. The failure of the planning commission to report within thirty days after the date of the request for the report by the governing body shall be deemed to be an approval by the commission of the additions or changes. If the additions or changes are disapproved by the commission, a two-thirds vote of the entire governing body shall be necessary to pass any ordinance overruling such disapproval. The board of city commissioners may approve, deny, or table the public hearing to a future date. A

motion to table the application to a future date shall be limited to no longer than 60 days. A decision to deny the land use amendment is final.

(7) Evaluative Criteria. In order to provide a favorable decision, the following must be considered:

- a. Does the proposed amendment align with the goals, objectives, policies, and other information contained within the City of Mandan Land Use and Transportation Plan and other plans adopted by the city; and
- b. Will the amendment, if approved, further create potential for disharmonious adjacent land uses; and
- c. Does the amendment contribute toward the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs, which, in accordance with present and future needs, best will promote the amenities of life, health, safety, morals, order, convenience, prosperity, and general welfare as well as efficiency and economy in the process of development, including adequate provision for light and air, distribution of population, good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, the improvement and control of architecture, and the general embellishment of the area under its jurisdiction.

(g) Request for Reconsideration.

- (1) Request for Reconsideration. The applicant who originally initiated the application may file a one-time appeal with the city planner within thirty (30) days of the final decision for land use applications contained in Chapter 105. The request shall be of reconsideration of a final decision by the board of city commissioners.
- (2) Complete Application. The request for reconsideration shall include a complete summary of the reasons for the request, including any new evidence or information if applicable. Public Hearing Noticing Requirements. Public and neighboring property owner noticing of the hearing must follow the public hearing noticing requirements of the respective land use application for the hearing body for which a final decision is rendered. The property owner notice requirement shall be considered to be met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification. The notice must contain the following items:
 - a. The time and place of the hearing;
 - b. A description of any property involved in the request, by street address if streets have been platted or designated in the area affected;

- c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary; and
- d. A statement of the times at which the application will be available to the public for inspection and copying at the office of the city auditor or his/her designee.

(3) Public Hearing Required. The board of city commissioners shall hold a public hearing no sooner than is possible to follow the public hearing noticing requirements of the respective land use application of the hearing body for which a final decision is rendered. The board of city commissioners may approve, approve with conditions, deny, or table the public hearing to a future date. Conditions of approval shall be related and roughly proportional to mitigate negative externalities affecting nearby property owners and the general public and to fulfill the intent of the adopted plans of the City. A motion to table the application to a future date shall be limited to no longer than 60 days. A decision rendered for the request for reconsideration is final, and any further appeals must be made to the district court.

If a request for reconsideration results in reversing a denied zoning ordinance map or text amendment, the zoning ordinance map or text amendment will be considered an approval of the first consideration, and a second consideration is required subject to the procedures outlined in this Section.

(Code 1957, §§ 14-0223, 14-0226; Code 1994, §§ 21-06-01, 21-07-01, 21-07-02)

State Law reference— Board of adjustment and appeals, N.D.C.C. § 40-47-07 et seq.; amendments to zoning ordinances, N.D.C.C. § 40-47-05.

Section 3. Sec. 105-3-1 related to applicability of standards is removed.

Sec. 105-3-1. – Reserved.

(Ord. No. 1242, § 5, 12-20-2016)

COUNTY RECORDER, MORTON COUNTY, ND **493860**

I certify that this instrument was filed and recorded
Nancy Seefeldt, County Recorder. Fee \$65.00

By *Nancy Seefeldt* March 30, 2020 8:41:29 AM

County Recorder

Morton County

Mandan ND 58554

493860

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