

A. ROLL CALL Chair Robinson called the meeting to order.

Commissioners Present: Mayor Froelich, Mudder, Horn, Buchmiller, Gardner, Intveld, Smith, Hammond, Robinson. Commissioners Absent: Huber, Leingang, McLean.

B. CONSIDER APPROVAL OF MINUTES

1. *August 26, 2024 Minutes.* Commissioner Smith pointed out...on Page 14, the very bottom of the page, the last line, where it says, Commissioner Huber and Commissioner Huber agrees to postpone; it should read “Commissioner Huber and Commissioner Smith”.

Commissioner Smith motioned to approve the August 26, 2024 minutes as corrected. Commissioner Hammond seconded the motion. Upon vote, the motion passed unanimously.

C. PUBLIC HEARINGS

1. *Consider a request for a setback variance for Lots 5-7, Block 1, Twin City Industrial Sites.*

Staff Recommendation: Planning Staff recommends review of the request and findings of fact, consideration of the statement of hardship and potential identification of a hardship, and modifying or accepting Staff’s findings of fact as necessary to support the motion of the board..

STAFF REPORT: City Principal Planner Stromme presented.

Background/alternatives

Mark Dettling dba M. Dettling Properties LLC, (Leingang Building) requested consideration of a variance to Section 105-3-16 of the City Code of Ordinances related to the MC-Industrial District Front Yard Setback. The zoning regulations in effect require a thirty-five (35) ft. front yard building setback. The variance request, if granted, would permit the construction of a building addition within the building setback area. The property is located at 2601 Twin City Drive and is described as Lots 5-7, Block 1, Twin City Industrial Sites Addition Section 25, Township 139N, Range 81W.

Property history/background

Twin City Industrial Sites were platted in 1974 and the property began development in 1980. Previous uses were industrial in nature. Multiple building additions were constructed on the property over the course of the 1980s and early 1990s. The 1992 addition to the larger warehouse complex was constructed approximately nine (9) ft. from the lot line. Staff found no records of a granted zoning variance to permit said building addition.

Proposed Project

The request would permit the construction of a building addition to the storage buildings on the east end of the lot. The current building is built up to the thirty-five (35) ft. setback line. Per the conceptual plan submitted with this item, the proposed building addition would encroach within the setback area by twenty (20) ft. (see submittals and property images) resulting in a fifteen (15) ft. setback for this building, a twenty (20) ft. variance, or a ~57% reduction in the setback required.

Staff Recommendation

Planning Staff recommends review of the request and findings of fact, consideration of the statement of

hardship and potential identification of a hardship, and modifying or accepting Staff's findings of fact as necessary to support the motion of the Board.

The applicant has provided a statement regarding their need for this variance "additional submittals". The applicant states, due to water runoff and drainage issues, that building in the southeast corner of the property is not possible and that this condition deprives them of what would otherwise be a reasonable use of land. Staff advises the Commission to specify, should there be interest in granting the requested variance, whether the minimum 20x30' addition is favorable, or if the applicant can build in line with the non-conforming referenced structure, which has a front yard setback of roughly eight (8) ft.

Variance Criteria

A variance can only be recommended by the Planning and Zoning Commission or approved by the Board of City Commissioners if it is found that:

- (a) There are unique circumstances or conditions specific to the land or building in question, as detailed in the board's findings. These conditions do not apply broadly to other properties in the neighborhood and are not a result of any actions by the applicant after this chapter was adopted.
- (b) The strict application of the zoning regulations would prevent the reasonable use of the property, as outlined in the board's findings. The variance is necessary for reasonable use and represents the minimum adjustment needed to provide the applicant with relief.
- (c) The variance will align with the overall purpose and intent of the zoning regulations and will not harm the neighborhood or public welfare.

Zoning, Land Use, and Future Land Use

The property is zoned MC - Industrial and is used as a contractor's office, warehouse and shop. Adjacent properties are zoned MC - Industrial to the east and west and used for similar purposes. The property to the south is a refined petroleum products facility and is zoned MB - Industrial. The future land use designation is industrial. The Gateway to Mandan overlay applies to the subject property given its frontage on Interstate 94.

Additional Information and Public Outreach

The application and variance fee of \$400 was received on August 26, 2024. Five (5) letters were sent to adjacent property owners. No objections or comments were received.

Findings of Fact

Zoning Variance

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 MC - Industrial district.

- The hardship is not caused by the provisions of the Zoning Ordinance.
- Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
- The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
- The granting of the variance is not in harmony with the general purposes and intent of the Zoning

Ordinance.

Planner Stromme recommended the Board review the request and findings of fact, to consider of the applicants statement of hardship, to potentially identify a hardship, and if so, to modify or accept staff's findings of fact as necessary to support the motion of the Board. The findings of fact only need to be modified if a hardship is identified. If no hardship is identified and a variance not warranted, no modification is necessary.

Commissioner Mudder inquired if the Board were to allow this variance, are there any future plans on the setback for the road in that area? And, what are the plans for maintenance on that road? Planner Stromme replied there have been no comments or concerns from other departments regarding potential building or construction. Commissioner Mudder inquired about the water problem in the back and if it is because of snow. Mark Dettling, the applicant explained his plan and/or solutions about where snow will be put due to the water problems in that area. The engineer involved is Mark Isaacs.

Chair Robinson inquired if there were any comments or questions. Hearing none, the public hearing was opened.

OPEN PUBLIC HEARING

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for a setback variance for Lots 5-7, Block 1, Twin City Industrial Sites. A second and third invitation was given to come forward to speak for or against the request.

CLOSE PUBLIC HEARING

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

COMMISSION ACTION

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

Commissioner Smith commented that he is not against the variance, however he recommended that it be as limited of a variance as possible.

Commissioner Smith moved to recommend approval of a setback variance request for Lots 5-7, Block 1, Twin City Industrial Sites from Section 105-3-16 of the City Code of Ordinances related to the MC-Industrial District Front Yard Setback but limited to a twenty (20) foot variance and to permit the variance request due to the following hardship strict application of zoning regulation that would prevent the use of property due to the nature of the flooding circumstances and water control in the southeast corner of the property. Commissioner Buchmiller seconded the motion.

Chair Robinson called for a roll call vote: Horn: Yes; Mudder: Yes; Mayor Froelich: Yes;

Intveld: Yes; Buchmiller: Yes; Smith: Yes; Hammond: Yes; Gardner: Yes; Robinson: Yes. The motion passed.

2. *Consider a preliminary plat and zone change from A (Agriculture) and MA (Industrial) to MA (Industrial) for Mandan Industrial Park 14th Addition.*

Staff Recommendation: Planning Staff recommends approval of the preliminary plat and zone change..

STAFF REPORT: City Principal Planner Stromme presented.

Statement/purpose

Central Bottling Company, Inc. requested a preliminary plat and zone change from A (Agriculture) and MA (Industrial) to MA (Industrial) for Mandan Industrial Park 14th Addition.

Background/alternatives

The purpose of this request is to increase the size of the bottling facilities property by combining it with the lot to the east of it, which is in a separate subdivision. The property is located at 2517 34th Avenue NW in the Mandan Industrial Park, west of Old Red Trail NW on the south side of 34th Avenue NW.

Request Overview

The request includes the platting of the existing properties into a single lot so they all have the same zoning distinction. The property currently consists of two parcels in two separate subdivisions, a vacated right of way that was not platted over to combine, and a property zoned MA - Industrial and a vacant lot zoned agricultural. The property to be combined would result in a 6.12-acre lot to be MA - Industrial zoned and used for that purpose.

Property History

Mandan Industrial Park was platted in 1974, and Sunview Heights is believed to have been platted in 1964, based on limited subdivision records. The section line/right-of-way vacation occurred after the platting, in 1981. At the time, it was not standard practice to require a plat to absorb vacated property. Imagery records suggest that the vacant lot in Sunview Heights was never developed with structures. The central bottling facility, built in 1982, has remained largely unchanged over the years.

Preliminary Plat and Zone Change

The preliminary plat is 6.12 acres in size and would contain one lot in one block. The plat includes various easements including those for public utilities and a water transmission line. There is no record of a zone change occurring for Sunview Heights addition. It is in the City's A - Agricultural District and that portion of the lot would be rezoned to the MA - Industrial district.

Adjacent Properties Zoning, Land Use, and Future Land Use

Adjacent properties are zoned and used as follows: to the east, residential homes zoned R7 - Residential. To the south, commercial offices zoned CC - Commercial. To the west and north, industrial facilities zoned MA - Industrial. The future land use distinction for this property is industrial.

Additional Information and Public Outreach

- An application and fee of \$1,000 was received on August 23, 2024.

- Twenty-three (23) letters were sent to adjacent property owners on September 5, 2024. No comments were received.

Findings of Fact

Preliminary Plat

1. All technical requirements for consideration of a preliminary plat have been met;
2. The proposed plat generally conforms to the 2014 Fringe Area Road Master Plan;
3. 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;
4. The proposed plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision;
5. The City of Mandan and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the proposed subdivision at the time of development;
6. The proposed subdivision is not located in the Special Flood Hazard Area, an area where the proposed developer would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development;
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
8. The proposed subdivision is consistent with the Comprehensive Plan, other plans and studies, policies and accepted planning practice; and an amendment to the Future Land Use Plan is underway, and;
9. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Zone Change

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

Staff Comments

- Future development on this site may require a stormwater management plan and/or development agreements.
- Non-access lines may be requested along Old Red Trail NW as a preventative measure.

Planner Stromme recommended approval of the request to consider a preliminary plat and zone change from A (Agriculture) and MA (Industrial) to MA (Industrial) for Mandan Industrial Park 14th Addition. The surveyor for the project was available to answer questions. The Land Use Plan is supportive of the Industrial Park.

OPEN PUBLIC HEARING

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request to consider a preliminary plat and zone change from A (Agriculture) and MA (Industrial) to MA (Industrial) for Mandan Industrial Park 14th Addition. A second and third invitation was given to come forward to speak for or against the request.

CLOSE PUBLIC HEARING

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

COMMISSION ACTION

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

Commissioner Buchmiller moved to recommend approval of the request to consider a preliminary plat and zone change from A (Agriculture) and MA (Industrial) to MA (Industrial) for Mandan Industrial Park 14th Addition. Commissioner Gardner seconded the motion.

Chair Robinson called for a roll call vote: Horn: Yes; Mudder: Yes; Mayor Froelich: Yes; Intveld: Yes; Buchmiller: Yes; Smith: Yes; Hammond: Yes; Gardner: Yes; Robinson: Yes. The motion passed.

3. *Consider a request for a preliminary plat for Biwer Subdivision.
Staff recommendation: To approve the preliminary plat for Biwer Subdivision..*

STAFF REPORT: City Principal Planner Stromme presented.

Statement/purpose

Consider a request for a preliminary plat for Biwer Subdivision.

Background/alternatives

Thomas Biwer, et al., and the City of Mandan, on behalf of the Lower Heart River Water Resource District (LHRWRD), requested consideration of a preliminary plat for the Biwer Subdivision, an 11.14-acre development in southeast Mandan. This request would facilitate the transfer of a 1.5-acre portion from the City of Mandan's parcel (LOT A of NW 1/4 SE 1/4 & LOT A of GOV LOT 7, less 12.32 acres of LOT 7, totaling 44.28 acres, parcel 9001C) to be combined with Thomas Biwer et al.'s parcel (LOT 1 of GOV LOT 8, including the former AUD LOT A of NE 1/4, 9.64 acres) through the platting process.

Property History

The City of Mandan, in partnership with LHRWRD, has been working on transferring land from this parcel to the Biwer parcel as part of a real estate transaction approved by the City Commission. This transfer is intended to support the construction of the Mandan Flood Risk Reduction project. Tom Biwer has offered the City a crucial 1.5-acre piece of land along the levee centerline, near the subject subdivision, in exchange for 1.5 acres of city-owned land adjacent to his property involved in this subdivision.

Preliminary Plat

The preliminary plat would be 11.14 acres in size and include open lot in one block. It details the property being located in a special flood hazard area. The portion of land to be acquired from the City and combined with the Biwer lot is roughly 103 feet by 630 feet and is the southwest most portion of the plat.

Adjacent Properties Zoning, Land Use, and Future Land Use

Adjacent properties to the east are zoned R7 - Residential and used for single-unit residential purposes. To the south and west, properties are undeveloped and zoned A - Agriculture. To the north, the City's wastewater treatment plant is located and is zoned A - Agriculture. The future land use plan designates this area as open space.

Additional Information and Public Outreach

- An application was received on August 23, 2024.
- Twenty-seven (27) letters were sent to adjacent property owners on September 5, 2024. No comments were received.

Staff comments

- The City portion of this plat is presently in the City Limits. Subject to City Commission review, it may be "excluded" from the corporate limits, based on the request from Tom Biwer et. al.. The Biwer's desire the property they own in this area to be excluded from the corporate boundaries.

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. Portions of the subdivision are located in the Special Flood Hazard Area and have wetland designations, and while no development is proposed, any such would be required to be developed according to the existing ordinance requirements pertaining to Floodplain Development and therefore, the proposed development should not 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 recommended approval of the request for a preliminary plat for Biwer Subdivision. Chair Robinson inquired if there were any comments or questions. Hearing none, the public hearing was opened.

OPEN PUBLIC HEARING

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request to consider a request for a preliminary plat for Biwer Subdivision. A second and third invitation was given to come forward to speak for or against the request.

CLOSE PUBLIC HEARING

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

COMMISSION ACTION

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

Commissioner Smith moved to recommend approval of a request for a preliminary plat for Biwer Subdivision. Commissioner Intveld seconded the motion. Chair Robinson called for a roll call vote: Horn: Yes; Mudder: Yes; Mayor Froelich: Yes; Intveld: Yes; Buchmiller: Yes; Smith: Yes; Hammond: Yes; Gardner: Yes; Robinson: Yes. The motion passed

D. **OTHER BUSINESS** Planner Stromme stated that he has two (2) items for updates that were not listed on the Agenda:

1. City of Mandan Zoning Study: Progress is being made and the study is at a point where there is an agreement of the draft copy of everything being in place where it needs to be. The next step is to review the copy and request any additional feedback and re-draft any portions that may need to be re-drafted.

2. Flex Condo's Update: The applicant will not be coming back to the P & Z Commission as they were approved for a Special Use Permit with a fully modified site plan.

E. **ADJOURN** There being no further business to discuss or come before the Board, a motion was made by Commissioner Hammond and seconded by Commissioner Gardner to adjourn the meeting. Upon vote, the motion passed unanimously.

The meeting adjourned at 6:04 p.m.