

**Regular Meeting: Planning Commission**

**Location:** City Hall, Council Chambers, 515 2nd Avenue SW, City of Minot, ND

**Meeting Called to Order:** Monday, August 26, 2019 at 5:30 p.m.

**Presiding Official:** Chairman, Jon Hanson

**Members in Attendance:** Baumann, Bullinger, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson (Commissioner Barnett joined the meeting after Approval of Minutes)

**Members Absent:** Bartsch, Keller, Offerdahl, Wegenast

**City Staff Present:** Brian Billingsley (Community & Economic Development), Lance Lang (Principal Planner), Kelly Hendershot (City Attorney), Lance Meyer (City Engineer), Alderman Podrygula, Officer Wheeler, Kelli Kronschnabel (Fire Chief), Jess Sinerius (Minot Rural Fire Department), Glenda Sorensen (Planning Assistant)

**Others Present:** Rianne Kuhn & Megan Laudenschlager (Visit Minot), Jason Cullen & Ken Burndt (Ferrellgas), Todd Berning (Epic), Karen Jensen

---

**Meeting Called to Order by Chairman Jon Hanson**

**Approval of the July 29, 2019 Regular Meeting Minutes.**

Motion by Commissioner DeMakis to approve without edits, second by Commissioner Koop, and was carried by the following roll call vote: ayes: Baumann, Bullinger, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson, nays: none

**Motion carries**

**The following are the recommendations of the Planning Commission:**

**Item #1:**

**It is recommended the City Council adopt a resolution approving a request by Ferrellgas, L.P. for a Conditional Use Permit to construct a propane storage and distribution facility on a site replacing an existing industrial use. This property is located at 1001 46<sup>th</sup> Avenue, NE.**

**Finding of Facts:**

1. A natural gas company had been looking for a site to establish a storage and distribution facility in the Minot area. The former site was compromised during the 2011 flood.
2. The applicant found two (2) parcels next to one another that have good transportation access and are commercially zoned.
3. The two sites selected are zoned C2, General Commercial which requires a Conditional Use Permit (CUP) for “storage or handling of hazardous materials.” A separate CUP is required for each parcel unless they are combined. The applicant chose not to combine them.
4. The applicant has applied for a CUP for each lot and submitted all required materials including a Site Plan.
5. Commercial development standards apply to C2 zones.

**Staff Recommendations and Conditions:**

Staff recommends approval of this Conditional Use Permit subject to the following conditions:

- 1) Storm Water Management Plan is required.
- 2) Site shall meet C2 requirements for number of parking spaces, curbing and hard surface parking area, and hard surface storage area with screening.
- 3) No additional access points on 46<sup>th</sup> Ave NE will be allowed.
- 4) This project must comply with commercial landscaping requirements for C2 zoning.
  - a. Street trees are required for the length of frontage along 46<sup>th</sup> Avenue NE in a ten (10) foot wide strip of grass abutting the public right-of-way. Said trees shall be a minimum size of 1 ½-inch caliper and shall be deciduous canopy or ornamental trees. The quantity of trees shall be determined by dividing the length of frontage by fifty (50) resulting in one (1) tree per each fifty (50) lineal feet of frontage. The trees need not be spaced exactly fifty feet apart. The trees can be grouped, evenly spaced, staggered, etc. as long as the size and quantity requirements are met.
  - b. Street tree requirements along the frontage of 10<sup>th</sup> Street NE right-of-way are waived to a later date to coincide with future construction of the street.
  - c. Interior parking lot landscaping is required for the customer/employee parking lot.
  - d. Parking lot landscaping is not required for ancillary truck parking north of the building or outdoor storage areas.
  - e. Foundation plantings are required along the front façade facing 46 Avenue NE.

Chairman Hanson asked the Principal Planner for staff comments. Principal Planner Lance Lang stated that this property and the adjacent lot to the east will both be developed to accommodate this propane facility, assuming the CUP’s are approved. CUP’s are tied to the land, so two separate CUP’s are required in this case, one for this parcel and one for the east parcel which is item # 2 on the agenda.

These properties are zoned C2, General Commercial. There has been an oil field service company operating from this property in recent years. The use type; "Sales, rental or storage of oil and gas well drilling equipment is not an allowable use in this zoning district. It is an industrial use, not a commercial use. The site should be developed to commercial standards, but it is not. Not sure how this was allowed to happen? The good news is that the proposed propane facility does fit in C2 zoning as a conditional use, hence the requirement for the CUP's. The use type is defined as "storage and handling of hazardous materials."

Principal Planner Lang continued, stating that the proposed facility will need to meet commercial development standards such as paving, stormwater management, and landscaping. These concerns were summarized and are listed in the conditions required for each permit.

Chairman Hanson opened up comments from the commissioners.

Chairman Bauman asked Principal Planner Lang what he foresees for that corner of the city. Lang stated that he cannot answer with confidence as there are too many unknowns. This area is on the fringe of development and located along the north by-pass. The pace of development across the community has been slow in recent times, and developers determine the type, location and timing of development ultimately. The future land use map shows large areas of "Business Park/Office" and "Medium Density Residential" which may be a stretch. "Neighborhood Commercial is depicted at the intersection of 46<sup>th</sup> Avenue to the east which makes some sense transitioning down from more intensive general commercial to local commercial. The higher density residential is questionable, there may be some, but the area is more likely to be predominantly lower density single-family and rural residential. Overriding large-scale planning concerns like these will be addressed with the next update to the comprehensive development plan.

Chairman Hanson asked Jason Cullen, representing Ferrellgas LLC, if he was accepting of the noted conditions, and Mr. Cullen confirmed that they are.

Chairman Hanson opened up comments from the public.

Mr. Cullen gave a background summary of the company and the project. He cited three (3) main points:

1. Ferrellgas are good neighbors for the city.
2. Ferrellgas helped to handle the Trinity gas explosion.
3. Ferrellgas has two (2) existing locations that will be closing and all facilities will be relocating to the subject sites.

Motion by Commissioner Koop to approve based on the terms & conditions and findings of fact, second by Commissioner Hochhalter, and was carried by the following roll call vote: ayes:

Barnett, Baumann, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson, nays: none, abstained: Bullinger.

### **Motion carries**

#### **Item #2**

**It is recommended the City Council adopt a resolution approving a request by Ferrellgas, L.P. for a Conditional Use Permit to construct a propane storage and distribution facility on undeveloped property. This property is located at 1011 46<sup>th</sup> Avenue, N.E. (adjacent to property listed above).**

#### **Finding of Facts:**

1. A natural gas company had been looking for a site to establish a storage and distribution facility in the Minot area. The former site was compromised during the 2011 flood.
2. The applicant found two (2) parcels next to one another that have good transportation access and are commercially zoned.
3. The two sites selected are zoned C2, General Commercial which requires a Conditional Use Permit (CUP) for “storage or handling of hazardous materials.” A separate CUP is required for each parcel unless they are combined. The applicant chose not to combine them.
4. The applicant has applied for a CUP for both parcels and submitted all required materials including a Site Plan.
5. Commercial development standards apply to this site as with any other commercial site.

#### **Staff Recommendations and Conditions:**

Staff recommends approval of this Conditional Use Permit subject to the following conditions:

- 1) Storm Water Management Plan is required.
- 2) No additional access points on 46<sup>th</sup> Ave NE will be allowed.
- 3) All ancillary parking and outdoor storage areas to be hard-surfaced with portland cement concrete or asphaltic concrete.
- 4) Street trees are required for the length of frontage along 46<sup>th</sup> Avenue NE in a ten (10) foot wide strip of grass abutting the public right-of-way. Said trees shall be a minimum size of 1 ½-inch caliper and shall be deciduous canopy or ornamental trees. The quantity of trees shall be determined by dividing the length of frontage by fifty (50) resulting in one (1) tree per each fifty (50) lineal feet of frontage. The trees need not be spaced exactly fifty feet apart. The trees can be grouped, evenly spaced, staggered, etc. as long as the size and quantity requirements are met.
- 5) A landscaped buffer yard is required along the east property line. The buffer yard shall be twenty (20) feet in width, planted to grass with one (1) tree for each

twenty (20) lineal feet of buffer yard. The trees shall be at least fifty percent (50%) conifers (evergreens) at least five (5) feet in height, not including the container or root ball. The remaining trees can also be conifers, or deciduous or ornamental trees can be used to fulfill this requirement, 1 ½-inch caliper minimum size. The buffer yard shall not be paved or rocked, shall not be used for parking or outdoor storage of equipment or materials.

Chairman Hanson requested staff comments.

Principal Planner Lang said this CUP request is basically the other half of the project. The conditions of approval are somewhat different for each one.

Chairman Hanson opened up comments from the commissioners. None were presented.

Chairman Hanson opened up comments from the public.

Jason Cullen, representative for Ferrellgas, came forward to clarify that this eastern area of the site will only hold “dead steel” storage, which means propane tanks will not be pressurized. The only pressurized tanks will be the two 30,000 gallon tanks to the west with the first CUP.

Motion by Commissioner DeMakis to approve based on the terms & conditions and findings of fact, second by Commissioner Koop, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson, nays: none, abstained: Bullinger.

### **Motion carries**

### **Item #3**

**It is recommended the City Council adopt a resolution to approve a request by Blu on Broadway, LLC for consideration of a Planned Unit Development (PUD) submittal for a mixed-use project containing commercial uses on the ground floor and affordable housing on upper floors, to consider an increase in proposed density and also deviations to landscaping and parking requirements. This property is located at 1629 S. Broadway.**

### **Finding of Facts:**

1. The applicant approached the City with a mixed-use commercial/residential building as a qualifying project for an infill affordable housing project for 100% Low and Moderate Income persons for some of the CDBG-NDR grant money available from the City.

2. The proposed project does not meet some of the standard development criteria required in the zoning ordinance:
  - a) The density of the proposed project exceeds the maximum allowable density in this zoning district.
  - b) The number of off-street parking stalls proposed falls short of the number required by code.
  - c) There is not sufficient space on the site left over to meet some of the landscaping requirements once the building, parking, and other site improvements are accounted for.
  
3. The applicant has applied for a Planned Unit Development Overlay over the C2 base zone to request deviations from the strict interpretation of the ordinance be allowed so that this project may be approved as presented.

**Staff Recommendations & Conditions:**

Staff recommends approval of the PUD application subject to the following conditions:

1. Storm Water Management Plan required.
2. Developer's Agreement required.
3. Developer required to improve 1<sup>st</sup> St SW to serve this project.
  - a. Install water main in 1<sup>st</sup> St SW.
  - b. Reconstruct 1<sup>st</sup> St SW – including sidewalk and lighting.
  - c. Additional details will be provided in the Developer's Agreement.
4. Traffic impact study – eliminate access to Broadway.
5. New fire service required.
6. Sewer connection fees required.
7. Additional addresses will be assigned to each leasable space with its own exterior door.
8. Approval of this PUD authorizes a reduction in off-street parking to 80 parking spaces from that quantity otherwise required by the Minot zoning ordinance.
9. Approval of this PUD authorizes an increase in allowable density to 30 living units per acre, well above the maximum that is otherwise enforced in C2 zoning districts.
10. Approval of this PUD and the associated concept Landscape Plan established intent, and authorizes some deviations in landscaping requirements as it allows the applicant to work with City staff and the Minot Park District in developing final plans for recreational amenities and landscaping that will be public amenities.
11. In the event of future problems with inadequate off-street parking for the residents, the City Council may require a certain quantity of the total parking spaces they deem reasonable to be signed as "Reserved for Residential Tenants Only."
12. A minimum of 3,000 square feet of office space shall be provided on the ground floor.

Chairman Hanson requested comments from City staff.

Principal Planner Lance Lang described the proposed project as an infill development at the site of the old Pepsi Bottling Plant on South Broadway between 16<sup>th</sup> and 17<sup>th</sup> Street SW. The proposed project is a five (5) story mixed-use building with commercial retail/office on the ground floor and four stories of residential apartments above. The apartments will be one hundred percent (100%) restricted to persons that meet low and moderate income (LMI) thresholds. There is also an underground parking garage for a limited number of vehicles. The developer is seeking approval from the City to leverage financing of up to \$4,750,000 in CDBG-NDR funds for LMI Housing which will be guaranteed by a forgivable loan. There is approximately 8,800 square feet of proposed retail/office on the main floor with forty-two (42) living units for qualified LMI tenants above.

---

For a mixed-use project such as this, Chapter 11 of the Minot Zoning Ordinance states the following under Section 11-3, Permitted Uses, paragraph q):

“Residential units (renter or owner occupied) use on the same lot and mixed in the same building with the residential use located in the floor(s) above the commercial use. All off-street parking and loading requirements are met for both uses (*emphasis added*). The height, area, and yard exceptions of the C2 district must also be met. Any residential units cannot exceed RM densities.” (*emphasis added*)

Lang stated that the proposed development exceeds the allowable density and falls short on the number of required off-street parking spaces. The developer and City staff agreed the best approach to present the project with the requested deviations is the Planned Unit Development approach. Although this project is not a large acreage typically associated with a PUD proposal, such as the recently approved Southwest Crossing PUD, nevertheless this proposal does contain a mix of commercial retail, office and affordable residential uses.

**DENSITY.** The maximum density allowed in RM, Medium-Density Residential is sixteen (16) units per acre. With forty-two (42) residential units proposed on 1.40 acres the proposed density of this project is thirty (30) units per acre, almost twice the listed maximum density of sixteen units per acre.

**PARKING.** The applicant is providing 80 off-street parking stalls, 53 less than the minimum required by strict application of Chapter 23, Off-Street Parking Regulations in the zoning ordinance. This due to the fact that the ordinance requirement for apartments is two (2) stalls per dwelling unit plus .25 stalls for visitor parking. The developer has requested reduction to one (1) stall per unit with no additional parking for visitors. The developer justified the reduction in residential parking on the fact that the proposed apartments are 100% reserved for qualified low/moderate income persons, many of which may not have a car, or if they do, it is unlikely the parking ratio will exceed one car per unit.

The gap between required and proposed parking is substantial, however staff is in agreement that the LMI factor reduces the parking demand when compared to market rate apartments. There are five (5) studio apartments and twenty-seven (27) one bedroom apartments out of the 42 total units. The studio and one-bedroom tenants will likely have only one car. There are only ten (10)

two-bedroom apartments out of the 42 total units. There is no leftover space on the site available for additional parking. If the residential density is deemed to be too high when compared to the available parking, the only solution is to lower the density and then the project may not qualify for the financial incentives the developer is seeking.

Staff also required a fixed percentage of the ground floor space be marketed for office use as opposed to retail because offices have a lower parking demand. The developer has committed to a minimum of 3,000 square feet of office space on the ground floor.

Staff has agreed that the seven (7) stalls in the proposed drive thru que can also be counted towards off-street parking.

**LANDSCAPING, OPEN SPACE & AMENITIES.** The development concept features an outdoor recreation space. As with the recent Southwest Crossing PUD the exact components and layout are not fully determined at this point as the developer is working with Minot Park District and City Staff to determine what type of recreational amenities are most needed in this area. The final product will be a public amenity that anyone in the community can use as opposed to an amenity package strictly for the tenants and customers. A Landscape Plan is provided that establishes a strong baseline for the landscaping of the site. As the project is further developed the details of the landscaping will be finalized.

Chairman Hanson opened up comments from the commissioners.

Commissioner Hanson noted that density is necessary for grant money.

Commissioner Baumann thanked the applicant for their work and stated that he appreciates that the project approach represented in the proposal is not reliant on cars to access local sites in the area.

Commissioner Larshus asked about the green space in the back and what the advantage was. Larshus also noted that this type of area is usually capped for the residents. Mr. Berning replied that there would be no monitoring of the green space and that it is open to the public.

Commissioner Hanson opened up comments from the public.

Todd Berning of Epic Properties, the lead developer for the project, cited the following:

- This project scored high within HUD sustainability metrics, primarily due to its location.
- Epic specializes in urban development.
- The exterior will be aesthetically pleasing. Brick, decorative block, pre-cast concrete, EIFS, glass and steel will be used.
- When completed, Epic believes that this will be the nicest LMI building in the state.



Karen Jensen came forward to state that she owns property adjacent to this site. She has no objections to the project, but is concerned about the overflow parking and agrees with Principal Planner's assessment that more parking is needed.

Commissioner Baumann stated that there is concern in the city for parking and asked if there would be room to modify. Principal Planner Lance Lang stated that this site is tight and there is no alternative or additional space available for parking. However, the Zoning Ordinance Advisory Committee will be looking at potential revisions to the off-street parking chapter in the near future.

Motion by Commissioner Koop to approve based on the terms & conditions and findings of fact, second by Commissioner Baumann, and was carried by the following roll call vote: ayes: Barnett, Baumann, Bullinger, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson, nays: none.

#### **Motion carries**

#### **Item #4**

**It is recommended the City Council pass an ordinance amending Chapter 2, Definitions and section 11-3(q) of Chapter 11 of the Zoning Supplement to the Code of Ordinances, City of Minot, North Dakota to regulate commercial and residential mixed use in hotels and motels in the C2, General Commercial Zoning District.**

#### **Finding of Facts:**

1. In recent months some hotels and motels have been emphasizing long-term stays as opposed to accommodations for typical overnight travelers by using the commercially zoned properties for what equates to residential apartments.
2. This trend is problematic because:
  - a. It violates zoning regulations.
  - b. The facilities were not built to be apartments.
  - c. There are no staff present.
  - d. Required exits are often locked or obstructed.
  - e. The owners are not paying lodging tax.
3. In some cases, lodging establishments offer residential quarters for employees to be on-site full time. The intent of the ordinance amendments is not to restrict this activity.
4. Language in the definitions chapter has been added to clarify that on-site residential quarters are permitted for employees. The C2 chapter of the zoning ordinance allows upper floor residential use if the ground floor is a commercial use which creates an unintended "loophole" allowing overnight lodging and motel operations on the ground floor with extend stay apartments above. This option will no longer be allowed unless

the motel operator seeks approval of the mixed-use facility as a Planned Unit Development.

5. Staff has drafted text amendments to address these issues.

### **Staff Recommendations and Conditions**

Staff recommends approval of the proposed ordinance amendments as presented.

Chairman Hanson asked for a staff report.

Principal Planner Lance Lang said staff and the Zoning Ordinance Advisory Committee have been working on these amendments for the past couple of months with input for several interest groups. In the last few months there has been media coverage regarding these issues. Staff felt that the language in C2 zoning permitting residential apartments above retail space on the ground floor was a potential “loop hole” whereby lodging owners could rent the ground floor unit for nightly stays as a retail business and the upper floor for long term stays as apartments. That is not the intent of this section of the code.

Some of the lodging facilities in Minot have been offering long term leases paramount to apartment use which is causing several concerns. This trend is problematic because:

- a. It violates zoning regulations. Residential (apartments included) uses are not allowed in commercial zones.
- b. The lodging facilities were not built to be apartments, and not built to accommodate long term stays with kitchen facilities for example. Renters then bring microwaves, hot plates, dorm fridges etc.
- c. There are no staff present, no front lobby.
- d. Required exits are often locked or obstructed which causes a life safety concern.
- e. The Visitors Bureau is concerned about the image these places may project to visitors staying in Minot
- f. The owners are not paying lodging tax.

Chairman Hanson opened up comments from the commissioners. There were none.

Chairman Hanson opened up comments from the public.

Megan Laudenschlager came forward and stated that she has been working with the City and is in favor of closing the loophole for a better visitor experience. She also thanked the city for their attention to the issue. Her two primary concerns are health and safety issues and the potential for a negative visitor experience.

Motion by Commissioner DeMakis to approve based on the staff recommendation and findings of fact, second by Commissioner Larshus, and was carried by the following roll call vote: ayes: Barnett, Baumann, Bullinger, DeMakis, Hanson, Hochhalter, Koop, Larshus, Sivertson, nays: none.

### **Motion carries**

### **Other Business**

Free training for Planning Commissioners at the upcoming North Dakota Planners Association Annual Conference in Bismarck, Thursday, September 19 from 3:50 to 6:00 PM at the end of the conference. This training is free, if anyone wants to attend other sessions during the conference they need to register on-line at <https://www.ndplanning.org/conference>. The conference will be held at the Bismarck Event Center, 315 S 5<sup>th</sup> Street. We need to RSVP numbers, so if you plan to attend please let Glenda know.

Principal Planner Lang thanked Planning Commission Chairman Hanson for his service to the city. This was greeted by a well-deserved round of applause. As previously nominated and elected, Commissioner Charles DeMakis will take over as Chairman at the September 2019 meeting.

With no other business before the committee, Chairman Hanson adjourned the meeting at 6:32.

**Minutes prepared by: Glenda Sorensen & Lance Lang**