

## CHAPTER 30 - ADMINISTRATIVE PROCEDURES

### Section 30-1 Development Administration, duties:

- a) The Planning Director and/or staff shall:
  - 1) Administer and enforce this title.
  - 2) Maintain permanent and current records of this title, including, but not limited to, all maps, amendments and conditional uses, variances, appeals and applications therefor.
  - 3) Receive, file and forward all applications for appeals, variances, conditional uses and interim uses, amendments or other matters to the designated official bodies, and shall act as the official liaison between the planning commission and city council.
- b) The building official shall:
  - 1) Review and determine that all building permits and certificates of occupancy comply with the terms of this title.
  - 2) Be responsible for the periodic inspection of buildings and land uses within the city to ensure compliance with the terms of this title.
  - 3) Initiate in the name of the city any appropriate actions or proceedings against any violator of this title, as provided by law.

### Section 30-2. Variances:

- a) Purpose: The Planning Commission may grant a variance from the strict application of this title only in instances where their strict enforcement would cause undue hardship in complying with the official control, because of circumstances unique to the individual property under consideration. A variance may be granted only when it is demonstrated that such actions will be in harmony with the general purposes and intent of this title and when the variance(s) are consistent with the comprehensive plan. The Planning Commission may impose conditions in the granting of variances. A condition must be directly related to the impact created by the variance.
- b) Application: An application for a variance shall be filed with the Planning Director and shall state the unique circumstances claimed as a basis for the variance. The application shall contain at least the following information:
  - 1) The signature of each owner of affected property or his agent.
  - 2) The legal description of the property and the common address.
  - 3) A description of the variance requested and a statement demonstrating that the variance would conform to the requirements necessary for approval.
  - 4) The present use.
  - 5) A site plan drawn to scale demonstrating the requested variance.
  - 6) Meeting with City Planning staff prior to submittal of the application.
- c) Referral to Planning Commission: The application shall be referred to the Planning Commission for study concerning the effect of the proposed variance upon the comprehensive plan, and upon the character and development of the surrounding neighborhood. The planning commission shall make a decision to grant or deny the variance, and may impose conditions in the granting of the variance. The conditions may include considerations such as location, character and other features of the proposed building.

- d) Approval; Denial: Variances require the approval of a majority vote of the Planning Commission. Variances may be denied by motion of the Planning Commission and such motion shall constitute a determination that the findings required for approval do not exist. No application for a variance which has been denied in whole or in part shall be resubmitted within six (6) months of the date of the order of denial, except upon grounds of new evidence or upon proof of change of conditions.
- e) Granting of Variances: The granting of variance shall be considered under the following conditions: Whereby, a reason of:
  - 1) Exceptional shallowness or shape of a specific piece of property;
  - 2) Exceptional topographical conditions, or
  - 3) Other extraordinary or exceptional situation or condition of a specific piece of property the strict application of any provision of this ordinance would result in:
    - a. Exceptional practical difficulties (without the variance reasonable use of the property is not possible); or
    - b. Unreasonable hardships: (due to circumstances unique to the property not created by the landowner, that would otherwise allow for reasonable use of the property) upon or fundamental unfairness to the owner of such property (as opposed to mere or even substantial inconvenience); or
    - c. The denial to a property owner of a similar property right enjoyed by other property owners in the neighborhood – the Planning Commission may authorize, after notice and hearing, a variance to the strict application of the terms of this ordinance to the extent that justice may be done.
- f) Before granting a variance, the Planning Commission must specifically find that it can be granted without substantial detriment to the public good and without actually impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.
- g) Any variance approved by the Planning Commission shall have a time limit of one (1) year after the Commission’s approval, during which the variance must be put into effect by the owner. Alternatively, the Planning Commission may establish a different time limit for any variance implementation if special circumstances warrant the same. If the time limit should expire before the variance is put into effect, the Planning Director, upon the owner’s written request, may grant additional time, not to exceed the number of days originally allowed by the Commission.
- h) Variances shall be approved by a majority vote of the Planning Commission (and majority vote of the City Council (4 affirmative votes) in the event of an appeal).
- i) Flood Protection Requirements Variances:  
If the variance requested relates to a restriction or requirement imposed by Chapter 20 of this Zoning Ordinance (whether or not a request for a variance of other provisions of this Zoning Ordinance is also requested or not) the Planning Commission shall apply the following additional criteria and procedures to such request:
  - 1) A variance may be issued for the repair or rehabilitation of an historical structure upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continuing designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
  - 2) No variance shall be granted within the floodway if any increase in flood levels in the community during the base flood would result from the grant of such variance.

- 3) A variance may be issued for new construction or a substantial improvement to be erected on a lot of one-half (1/2) acre or less in size which is contiguous to and surrounded by lots with existing structures constructed below the base flood level. Such variance shall only be issued upon:
  - a. a showing of good and sufficient cause;
  - b. a determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - c. a determination that the granting of the variance will not result in increased flood height, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, conflict with existing ordinances other than Section 20 of this Zoning ordinance (unless a variance is also obtained as to such other ordinance as pursuant to Subsections a-h listed above); and
  - d. a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - e. If a variance is granted as requested, the Commission shall notify the applicant in writing that the application is granted or modified and as modified is granted;
- j) The Planning Commission, or such city official as it may delegate, shall maintain as a public record open for inspection all variance applications. If an application was granted or modified and as modified granted, the Planning Commission shall prepare a written memorandum setting forth the reasons or justifications for the issuance of the variation which shall be attached to the application.

#### Section 30-3. Conditional Use Permits:

- a) Intent: The provisions of this section are intended to permit certain land uses which, under special conditions and review, can be compatible with the uses permitted by right in a zoning district, and desirable to the development of the City as a whole. Only those uses identified in the zoning district regulations are eligible for a conditional use permit under the procedure described below. A conditional use permit shall not be granted unless it meets the minimum standards and requirements of the applicable zoning district where permitted.
- b) Application, Public Hearing, Notice and Procedure: The application, public hearing, public notice and procedure requirements for conditional use permits shall be the same as those for amendments as provided in Section 30-5 of this chapter, except that the permit shall be issued on the affirmative vote of a majority of the entire council. Although specific submittals required to complete an application for a conditional use permit may vary with the specific use and the district in which it is located, all applications for such permits must include at minimum:
  - 1) The signature of each owner of affected property or his agent.
  - 2) The legal description of the property and the common address.
  - 3) Zoning of adjacent properties
  - 4) A description of the request, proposed use and compliance with standards listed in item "c" below.
  - 5) A site plan drawn to scale showing principal and accessory buildings, setback lines, parking lot layout and stall sizes, curbing, landscaping (area calculation, plan and

- planting schedule), ingress/egress, loading areas, screening/buffering, lighting, refuse/service areas, grading and utilities.
- 6) Building Elevations/Floor Plan including existing and proposed: Provide front, sides and rear elevations with all building dimensions including height, materials and colors that are clearly labeled.
  - 7) Meeting with City Planning staff prior to submittal of the application.
- c) Standards: The Planning Commission shall recommend a conditional use permit and the Council shall issue such conditional use permits only if it finds that such use at the proposed location:
- 1) Will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city.
  - 2) Will be harmonious with the general and applicable specific objectives of the city's comprehensive plan and this title.
  - 3) Will be designed, constructed, operated and maintained so to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area.
  - 4) Will not be hazardous or disturbing to existing or future neighboring uses.
  - 5) Will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools; or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use.
  - 6) Will not create excessive additional requirements for public facilities and services at public cost and will not be detrimental to the economic welfare of the community.
  - 7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors.
  - 8) Will have vehicular approaches to the property which do not create traffic congestion or interfere with traffic on surrounding public thoroughfares.
  - 9) Will not result in the destruction, loss, damage of a natural, scenic, or historic feature of major importance.
  - 10) Will not depreciate surrounding property values.

In determining such conditions, special consideration shall be given to protecting immediately adjacent properties from objectionable views, noise, traffic and other negative characteristics associated with such uses.

- d) Planning Commission Consideration: Provided the applicant has furnished all information as requested by the City Planning Office, the Planning Commission shall consider the application at its next meeting provided the prescribed notification requirements can be met. Before making a recommendation, the Planning Commission shall review the application for a conditional use permit to ascertain compliance with the specific standards governing individual conditional uses, and that satisfactory provision and arrangement has been made concerning the following, where applicable:
- 1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

- 2) Off-street parking and loading areas where required.
  - 3) Refuse and service areas.
  - 4) Utilities, with reference of locations, availability, and compatibility.
  - 5) Screening and buffering with reference to type, dimensions, and character.
  - 6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
  - 7) Required yards and other open space.
  - 8) General compatibility with adjacent properties and other property in the district.
- e) City Council Action: When it has been determined by the City Council (with approval by majority vote, 4 affirmative votes) that such conditional use will promote the public health, safety, and welfare, and that such proposal is, in general, compatible with adjacent or nearby land uses, the zoning code, and the City's comprehensive plan, the City Council may approve the conditional use permit. In authorizing this permit, the City Council may impose such conditions it deems necessary, i.e. landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, signage, planting screens, operational control, hours of operation, compatibility of appearance, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, to fulfill the purpose and intent of this Ordinance. Any conditions imposed by the City Council shall be attached to the conditional use permit and failure to comply with any condition in a conditional use permit shall be a violation of this Ordinance.
- f) Amended Conditional Use Permits: An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include reapplications for permits that have expired or have been denied, requests for substantial changes in conditions or expansions of use, and as otherwise described in this Ordinance. Applications for conditionally permitted uses which consist of multiple structures to be developed on the property shall include a conceptual development plan showing the structures proposed. The conditional use permit is approved for the use of the property which does not require an amendment each time a structure is proposed; however, once proposed development exceeds the approved conceptual development plan or if the characteristics of use change, an amended application shall be submitted for consideration.
- g) Expiration: If substantial construction has not taken place within one (1) year of the date on which the conditional use permit was granted, the permit is void except that, on application, the council, after receiving recommendation from the Planning Commission, may extend the permit for such additional period as it deems appropriate. If the conditional use is discontinued for six (6) months, the conditional use permit shall become void. This provision shall apply to conditional use permits issued prior to the effective date of this title, but the six (6) month period shall not be deemed to commence until the effective date of this title.

#### Section 30-4. Interim Uses:

- a) Purpose: The purpose and intent of allowing interim uses is: 1) to allow a use for a limited period of time that reasonably utilizes the property where it is not reasonable to utilize it in the manner provided in the comprehensive guide; and 2) to allow a use that is presently acceptable but that, with anticipated development, will not be acceptable in the future.

- b) Application, Public Hearing, Notice, and Procedure: The application, public hearing, public notice and procedure requirements for interim use permits shall be the same as those for conditional use permits as provided in Sec. 30-3 of this chapter.
- c) Standards: The Planning Commission shall recommend an interim use permit and the council shall issue such interim use permits only if it finds that such use at the proposed location:
  - 1) Meets the standards of a conditional use permit set forth in Chapter 30-3 of this chapter.
  - 2) Conforms to the zoning regulations, performance standards and other requirements.
  - 3) Is allowed as an interim use in the zoning district.
  - 4) Will terminate upon a date or event that can be identified with certainty.
  - 5) Will not impose, additional costs on the public if it is necessary for the public to take the property in the future.
  - 6) Will be subjected to, by agreement with the owner, any conditions that the city council has deemed appropriate for permission of the use, including a condition that the owner will provide an appropriate financial surety to cover the cost of removing the interim use and any interim structures upon the expiration of the interim use permit.
- d) Termination: An interim use permit shall terminate upon the occurrence of any of the following events; whichever first occurs:
  - 1) The date stated in the permit; or
  - 2) A violation of conditions under which the permit was issued.

Section 30-5. Text Amendments and Zoning District Changes:

The regulations, restrictions, and boundaries set forth in this chapter may from time to time be amended, supplemented, changed or repealed by the City of Minot City Council.

- a) Public Hearing: The City Council on its own motion or on petition may amend or supplement by ordinance the regulations or districts established herein or subsequently established. No final action thereon by the City Council may be taken without a public hearing before the Planning Commission. The Planning Commission may close the hearing and forward its recommendations to the City Council at the same meeting at which it initially opens the public hearing, or may continue the item for further consideration or for further public comment, or for both, at a later meeting.
- b) Notice Required: Notice of the time, place, and purpose of the initial hearing shall be given by publication once in a newspaper generally circulated in the City of Minot, with such notice to be published at least seven (7) days prior to the initial hearing, exclusive of the day of publication and the day of the hearing. The same notice shall be sent by certified mail, return receipt requested, not later than the date of publication of such notice to the owners of the premises to which the proposed zone change or other amendment of these regulations applies (the "affected area") and to the owner of the premises lying within three hundred feet (300) of the affected area. The expense of providing such notices shall be paid by the proponent of the zone change or other amendment.
- c) Waiver of Notice: The requirement that notice be mailed to landowners may be waived in whole or in part (by such devices as selective or random mailing) in respect to proposals for zone changes or proposed amendments to these regulations that are initiated by the city itself. Such waiver shall be by resolution joined in by super majority of the city council and may be made at any time before or after the public hearing.

- d) Who may initiate amendments of this Ordinance may be initiated by:
  - 1) A petition of the owner or owners of the property, the zoning of which is proposed to be changed.
  - 2) A recommendation of the Planning Commission.
  - 3) By action of the City Council
- e) Application Required: If a property owner or representative of the property owner wishes to request an amendment, s/he shall fill out an application, copies of which are available at the City Planning Office. No application for a rezoning of a particular piece of property shall be accepted more than once in any six (6) month period except if the prior application was withdrawn before action was taken by the City Council, or if the Planning Commission determines that the circumstances surrounding a previous application for a rezoning has changed. The application shall be filed with the Planning Director who shall refer the application together with his/her comments thereon to the Planning Commission. Applications for rezoning property which has not been previously platted shall be required to plat the property in accordance with Chapter 28. In addition, applications for rezoning shall be consistent with the City of Minot Comprehensive plan in terms of land use and be located within the stage growth area plans of the Comprehensive Plan to prevent premature subdivision and development.
- f) Any application for rezoning of property shall include the following information:
  - 1) A generalized location map and aerial photograph showing the location of the proposed site in relation to the overall city.
  - 2) Zoning of the subject parcel and all adjacent properties.
  - 3) The land use designation on the City's Future Land Use Map of the subject property and all adjacent properties.
  - 4) A boundary survey of the site, drawn to scale, showing property lines and any improvements present on the site, with dimensions and with north indicated. Other information such as locations of wetlands, exiting woodlands, water courses, or other natural features present on the site shall be shown. In some cases, staff may request more information be shown to aid in evaluation of the development potential of the site such as contour lines or spot elevations.
  - 5) A list of proposed uses, and whether said uses are either permitted, conditional, or interim in nature.
  - 6) Location of all existing buildings, setback lines, structure, easements of record, or other encumbrances on the proposed site.
  - 7) At a minimum, a written description of the applicant's intent and vision for the development of the property shall be provided. If known, a conceptual layout of the site depicting proposed improvements including, but not limited to: buildings, parking, access points, outdoor service areas and loading spaces, landscaping, outdoor storage, etc. Applicants are encouraged to submit additional information that may further describe the applicant's request.
  - 8) Landscape plan subject to Chapter 24.
  - 9) General floor plans of all proposed buildings and structures.
  - 10) Design layout and size of all proposed signs.
  - 11) Drainage plan of the proposed site.
- g) Any application for a zoning text amendment shall cite the ordinance section that is requested for amendment or specify new text for consideration as an amendment.
- h) Review by Planning Commission: No amendment, supplement, change or modification of this

Ordinance shall be made by the City Council without first the consideration of each by the Planning Commission. The Planning Commission approval shall be by majority vote of its members. Following a public hearing before and consideration by the Planning Commission, the Commission shall submit in writing its recommendations on each amendment, supplement, change or modification to the City Council within sixty (60) days after receipt thereof. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the Comprehensive Plan. Said recommendation shall be of an advisory nature only.

- i) Action by the City Council: After receipt of the recommendation on any amendment from the Planning Commission, or in any event of the failure of the Planning Commission to so report, within ninety (90) days from the time of referral of the proposed amendment to the Planning Commission, the City Council shall hold a public hearing, after which the proposed amendment may be passed. City Council approval shall be by majority vote (four (4) affirmative votes).
- j) Written Protest; Effect Thereof: If, prior to the second reading of an ordinance referenced in this Section, one or more written protests of the ordinance have been filed with the City Clerk, which protests have been signed by the owners of at least twenty percent (20%) of:
  - 1) the area described within the ordinance as being acted upon by the ordinance (as in, for example, an ordinance changing the zoning district for a specifically described lot); or
  - 2) the area adjacent to and extending three hundred (300) feet and three hundred (300) feet in the extraterritorial zoning jurisdiction, from the area described within the ordinance as being acted upon by the ordinance;the passage of the ordinance on second reading shall require a super majority of the City Council.
  - 1) In computing area for purposes of subsection (a), there shall not be included real estate owned by the City of Minot.
  - 2) A written protest may be disavowed, in which event the protest shall be deemed to have been nullified. A disavowal of a written protest must be in writing, must be signed by the same person or persons who signed the written protest to which it relates, and must be filed with the City Clerk prior to the second reading of such ordinance (or forwarded from a Planning Commission meeting).
- k) Petition Requirements: All petitions requesting a change, amendment, or supplement of the established zoning districts of the city and regulations connected therewith shall be filed by the person requesting such action and such petition shall contain the street address of the petitioner, the lot number of any real estate owned by him adjacent to the area proposed to be changed and shall also contain an accurate legal description of the district or parts of districts proposed to be so altered. Such petition shall also recite facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this ordinance, and shall further disclose the purpose for which such property is sought to be used.
- l) Filing and Fees: A petition for a change in the regulations or districts herein or subsequently established shall be filed with the Planning Director. A fee, as established by the City Council, shall be paid at the time of filing. Also, the petitioner shall pay the total cost of mailed notices required by Section 30-2.
- m) Post-Amendment Publication and Certification Not Required:
  - 1) Notwithstanding the provisions of N.D.C.C. 40-47-04 and 40-47-05 to the contrary no publication of a notice of the establishment of any regulation, restriction, or boundary or



amendment of the zoning ordinance shall be required after the City Council acts to establish such regulation, restriction, boundary or amendment.

- 2) Notwithstanding the provisions of N.D.C.C. 40-47-04 and 40-47-05 to the contrary, a certified copy of an ordinance or resolution with respect to or affecting zoning need not be filed with the City Auditor, but rather the City Clerk shall file copies of such ordinances or resolutions in the same manner as applies to other ordinances or resolutions.

Section 30-6. Appeals:

- a) At any time within thirty (30) days after the Planning Director, or other city employee or committee makes a decision under the provisions of this title, except in connection with prosecution for violations thereof, the applicant or other person affected thereby may appeal the decision by filing a written notice stating the action appealed from and stating the specific grounds upon which the appeal is made.
- b) The Planning Commission shall conduct a public hearing on the appeal and make a recommendation to the City Council.
- c) The City Council shall conduct a public hearing and make the final determination. Final decision shall be by majority vote of the City Council.
- d) Notice of the hearing before the Planning Commission and City Council shall be mailed to all appellants. In all cases involving determination of district boundary lines, or interpretation of the text of this title, ten (10) days published notice of hearing in the official newspaper shall be given. (Ord. 1189, 1-19-2010)
- e) If the City Council denies the appeal an application for the same request or re-appeal cannot be submitted for three (3) months from the date of the final City Council decision.

Section 30-7. Annexation:

- a) Annexation requests shall follow provisions outlined in 40-51.2-07 through 40-51.2-11 of the North Dakota Century Code.
- b) Prior to second reading of the annexation ordinance, a notice of annexation must be published a minimum of one (1) time. If annexation is to be reviewed by resolution, a notice shall be published once each week for two (2) weeks at least thirty (30) days before the public hearing is held.
- c) Approval of annexation requires a minimum of four (4) votes of the City Council.