

**MANDAN PLANNING AND ZONING COMMISSION**  
**MANDAN CITY HALL**  
**Monday, April 25, 2022**

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on April 25, 2022, at 5:30 p.m. CST. City Hall will be open for this meeting. If you would prefer to appear via video or audio link, please provide your contact information to [andrew.stromme@cityofmandan.com](mailto:andrew.stromme@cityofmandan.com). Planning & Zoning Commissioner members may be attending this meeting remotely.

**ROLL CALL**

Commissioners Present: Mehlhoff (virtual), Horn, Helbling, Liepitz, McLean, Frank, Vayda, Otto (virtual), Robinson. Commissioners Absent: Leingang, Camisa.

*Commissioner Frank motioned to approve the March 28, 2022 minutes as presented. Commissioner Horn seconded the motion. Upon vote, the motion passed unanimously.*

**PUBLIC HEARINGS**

***1. A request from James and Kelsi Hach for a Preliminary Plat, Zone Change from A – Agriculture to CB – Commercial and Annexation for a subdivision to be titled Rafters at Hach Creek Addition. Said property is Auditor’s Lot E and Lot A of Tract 7B-1, Section 7, Township 139, Range 81. The property is located on the east side of 56<sup>th</sup> Avenue NW near Old Red Trail NW and Roughrider Subdivision.***

**A. Staff Report**

City Principal Planner Stromme presented.

James and Kelsi Hach are requesting approval of a preliminary plat, zone change from A – Agriculture to CB – Commercial and annexation for a subdivision to be titled Rafters at Hach Creek Addition. This property is located in the extraterritorial area in NW Mandan, north of Old Red Trail and west of 56<sup>th</sup> Avenue NW near Roughrider subdivision.

**Preliminary Plat**

The preliminary plat is 17.69 acres in size and contains four (4) lots in one block. There is no public right of way associated with this plat.

**Right-of-Way, Utilities, Easements and Access**

One-hundred feet (100’) of right-of-way has been dedicated for 56<sup>th</sup> Avenue NW and thirty-foot (30’) access easements provide access for private infrastructure to all lots within the subdivision from 56<sup>th</sup> Avenue NW. Fifteen-foot (15’) utility easements are shown to all lots.

**Zoning**

Lots 1-4, Block 1 are all to be rezoned from A – Agriculture to CB – Commercial. The proposed zoning of CB – Commercial aligns with the Future Land Use Plan which recommends commercial for this property (Exhibit 3).

## **Annexation**

All lots within Rafters at Hach Creek Addition would be annexed to the City of Mandan. This annexation is contiguous with existing City Limits and would be able to be served with utilities, police and fire service.

Planner Stromme stated that 38 letters were sent out to adjacent property owners and there not been any feedback. There are some property conditions that will be developed and reviewed. There is an existing stock dam and a creek located on the property.

## **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. The proposed subdivision is not located in the Special Flood Hazard Area or an area where development would 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.

### **Zone Change and Annexation**

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 annexation;
2. The proposed annexation is a contiguous extension of the current limits of the City of Mandan;
3. The proposed annexation and zoning change is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed annexation and zoning change is consistent with the Future Land Use Plan, other adopted plans and policies, and accepted planning practice;
5. The proposed annexation and zoning change would not adversely affect public health, safety and general welfare.

- There is a creek/stock dam on this property. Both are listed on the State of North Dakota Wetlands Map. This requires review to conform with City and ND DEQ policies. They will be checked when the Storm Water Plan is reviewed.

- The proposed subdivision would have at the time of development, two access points onto 56<sup>th</sup> Avenue NW. Should beltway plans be realized or other conditions present themselves, the number of access points may need to be reduced or consolidated with adjoining properties for proper access control.
- Staff expects a future request for a Special Use Permit to allow multi-use shops on this property.
- The property is presently not located within the Gateway to Mandan Overlay. An ongoing discussion related to this overlay is underway and the property may be brought into the Gateway Overlay alongside other corridors. (See other business – to be discussed at the April 26, 2022 MARC meeting).
- Right-of-way dedication for 56<sup>th</sup> Avenue NW aligns with Beltway study recommendation (100' from centerline).

Planner Stromme stated that the Planning and Engineering staff recommended approval of the preliminary plat, zone change from A – Agriculture to CB – Commercial and Annexation for Rafters at Hach Creek Addition as presented. Representatives from the Development Team were available to answer questions.

## **B. Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against a Preliminary Plat, Zone Change from A – Agriculture to CB – Commercial and Annexation for a subdivision to be titled Rafters at Hach Creek Addition.

## **C. Close Public Hearing**

Chair Robinson inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against approval of the preliminary plat, zone change from A – Agriculture to CB – Commercial and Annexation for a subdivision to be titled Rafters at Hach Creek Addition, Hearing none, this portion of the public hearing was closed.

## **D. Commission Action**

Chair Robinson inquired if there were any other questions or comments from the Commission.

Commissioner Otto requested Planner Stromme to clarify the Gateway study that is currently being considered by the city. Planner Stromme explained that there are two components to the Gateway in Mandan or the Memorial Highway overlay district. In general, it will allow greater aesthetic control on highly visible corridors or entrances to the community with development trends that require additional corridors to be brought into that process. It may be appropriate for 1806 or Old Red Trail as community corridors with properties being planned alongside them to be brought into that district. In order for that to happen, he would want to see a recommendation from the Community Beautification Committee (Mandan

Architectural Review Committee) prior to this Board taking action. Those Boards have been prompted to address these discussions and he said he expects to see results from that study in the next couple weeks. Commissioner Otto inquired if that will be considered before this matter becomes a final plat? Planner Stromme replied it will probably not be received in time due to the timelines needed for the review and drafting of an Ordinance to amend the Zoning (Ordinance) to allow for this to be brought into the Gateway wherein it is possible that will take longer than the review for this specific request. Regardless of timelines, if it is the recommendation of this Board to move forward, he will bring it back to the Planning and Zoning Commission for an amendment to the city's Zoning Text (Ordinance).

Chair Robinson inquired if there were any other questions or comments from the Commission.

*Commissioner Frank motioned to recommend approval of the preliminary plat, zone change from A – Agriculture to CB – Commercial and Annexation for a subdivision to be titled Rafters at Hach Creek Addition as presented. Commissioner Liepitz seconded the motion. Upon vote, the motion passed unanimously.*

**2. A request from TRX Developers LLC for consideration of a Final Plat for a subdivision to be named Shores at Lakewood Addition. Said property is An Unplatted Portion of Outlot 1 and Lot 1 of Lot B in the North Half of Section 1, Township 138, Range 81 West of the Fifth Principal Meridian, Morton County, North Dakota. The property is located in southeast Mandan, west of 34<sup>th</sup> Street SE, south of Prairie West Golf Course.**

#### **A. Staff Report**

City Principal Planner Stromme presented.

TRX Developers, LLC is requesting approval of a final plat for a subdivision to be titled Shores at Lakewood Addition. The proposed development is located in southeast Mandan, west of McKenzie Drive SE and 34<sup>th</sup> Avenue SE. For tonight's purposes, the preliminary plat is included in the packet and the area north of McKenzie Drive Southeast.

#### **Development History**

Various iterations of development plans for this property have been considered at 2019, 2020 and 2021 Planning and Zoning Commission meetings. This resubmitted plat was reviewed as a Preliminary Plat at the February 28<sup>th</sup> Planning and Zoning Commission alongside a request to amend the Future Land Use Plan and rezone the property from A – Agriculture to PUD – Planned Unit Development. Since project initiation, major concerns with the development that have been addressed include:

- Modifications to the Heart River oxbow
- Number of residential lots
- Size of lots north of McKenzie Drive SE
- Development agreement with Lower Heart River Water Resource District
- US Army Corps of Engineers Review

The Preliminary Plat, Future Land Use Plan Amendment and Zoning Amendment were considered and approved at the February 28, 2022 Planning and Zoning Commission meeting and April 5 and April 19, 2022 City Commission meetings that placed this property into a PUD based on R7, R4, R3.2 districts which are all residential in nature with some commercial to the south portion of the master plan. These will all be updated if the plat is approved.

### **Final Plat**

The Final Plat contains forty-one (41) residential lots and one park lot in two (2) blocks. Primary access to the subdivision would come from McKenzie Drive SE and later Oxbow Trail SE (Phase 2 of masterplan).

### **Right-of-Way and Easements**

Dedicated Right-of-way (ROW) shown for McKenzie Drive SE is eighty feet (80') and sixty-six feet (66') for Dutton Circle SE. McKenzie Drive SE is designated as a future minor arterial roadway that in the future would cross the river. One-hundred and sixty-six feet (166') of ROW is to be set aside for that infrastructure and levee access. A fifty-foot (50') levee and storm water easement runs along the levee on Lots 1-7, Block 1 that includes a fourteen-foot (14') utility easement. A storm water easement runs in the Heart River oxbow in the rear of Lots 14-21, Block 1. A twenty-foot (20') access and storm water easement is between Lots 10 & 11, Block 2 to provide access from Dutton Circle SE to Lot 21, Block 2 (private park lot). A twenty-foot (20') access and storm water easement is shown between Lots 7 & 8, Block 1. Standard ten-foot (10') utility easements are shown throughout the subdivision.

### **Zoning**

This development is planned to be a PUD – Planned Unit Development based on R3.2 – Residential, R4 – Residential, R7 – Residential and CB – Commercial. All lots are proposed to follow a standard setback amount.

- Front Yard: 25'
- Side Yard: 5'
- Side Yard on Street: 15'
- Rear Yard: 20'

### **Floodplain Development**

The dirt excavated from the pond will be used to raise the residential lot elevations above the 100-year flood elevation. The final building elevations will be reviewed during building permit process. Proposed residences would be built two feet over base flood elevation, which is in compliance with City Ordinances. Basements, if allowed by City of Mandan Building Inspections, would be required to be flood-proof.

### **USACE Review**

The Development Team has completed review from the US Army Corps of Engineers (USACE) related to the Section 408 permit required for projects in critical zones of levee operation and maintenance. The Developer has entered into a Development Agreement with Lower Heart River Water Resource District that addressed the following:

- Demarcation of the levee system ROW and upkeep of demarcations

- Signage limiting access to LHRWRD property and maintenance of signage
- HOA Appointment of liaison to delegate with LHRWRD and be available during high-water events
- Restrictions added to purchase agreements prohibiting basements within 500 feet of levee centerline
- Restrictions to require any basements in development (outside of 500 feet buffer) to be flood-proofed.
- Easement for LHRWRD equipment to obtain access to levee through the development.
- HOA to provide notice annually to specify and remind homeowners of limitations within LHRWRD property and easements.

Adjacent land uses to the proposed development include low-density residential, medium-density residential, institutional and recreational lands.

### **Findings of Fact**

#### **Final Plat**

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary plat for the proposed subdivision that was approved by the Planning and Zoning Commission;
3. The proposed subdivision generally conforms with the Future Land Use Plan and other plans and studies;
4. The proposed subdivision is located in the Special Flood Hazard Area but is proposed to be constructed in accordance with the Floodplain Development Ordinance and therefore will not adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development,
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
6. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
7. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

Staff received two inquiries related to this project from adjacent property owners. Many of those comments are similar to those of the preliminary plat process. A total of 84 letters were sent. Inquiries received by the time of the posting of this agenda packet have been forwarded to Planning and Zoning Commission. Mandan Parks District supports access to Prairie West Golf Course between Lots 7 and 8, Block 1. Lower Heart River Water Resource District provided comment to the city related to their ability to support the project. (Exhibit 7). The proposed subdivision is complimentary with adjacent land uses.

Planner Stromme stated that the Planning and Engineering staff recommended approval of the final plat for Shores at Lakewood Addition and to enter into a Development Agreement similar to Exhibit 4 which was included in the agenda documentation.

Chair Robinson again inquired if there were any comments or questions for Planner Stromme from the Commission.

## **B. Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against a request from TRX Developers LLC for consideration of a Final Plat for a subdivision to be named Shores at Lakewood Addition.

Brian Zuroff, a civil engineer with Mountain Plains Engineering came forward and stated that he represents TRX Developers/Arthur Goldhamer and that he and Mr. Goldhamer are available to answer questions regarding this project.

Chair Robinson again inquired if there were any comments or questions for the engineer or the developer at this time.

## **C. Close Public Hearing**

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against the request from TRX Developers LLC for consideration of a Final Plat for a subdivision to be named Shores at Lakewood Addition. Hearing none, this portion of the public hearing was closed.

## **D. Commission Action**

Chair Robinson inquired if there were any other questions or comments from the Commission.

*Commissioner Liepitz motioned to recommend approval of the request from TRX Developers LLC of a Final Plat for a subdivision to be named Shores at Lakewood Addition and to enter into a Development Agreement similar to Exhibit 4. Commissioner Otto seconded the motion. Upon vote, the motion passed unanimously.*

**3. A request from LH Holdings, LLP for consideration of a Final Plat for a subdivision to be titled Keidel's South Heart Terrace 5<sup>th</sup> Addition. Said property is Part of the Northwest Quarter in Section 3, Township 138N, Range 81W, City of Mandan, Morton County, North Dakota. The property is located in southwest Mandan, south of 19<sup>th</sup> St. SW and east of 8<sup>th</sup> Avenue SW.**

### **A. Staff Report**

City Principal Planner Stromme presented.

LH Holdings, LLP is requesting approval of a final plat for a subdivision to be titled Keidel's South Heart Terrace 5<sup>th</sup> Addition. This property is located in southwest Mandan, south of 19<sup>th</sup> Street SW and west of 8<sup>th</sup> Avenue SW.

## **Final Plat**

The final plat is 24.69 acres in size and contains 93 lots in 7 blocks. A mid-block sidewalk is shown on Block 1 to facilitate a pedestrian connection throughout the subdivision. All streets show sixty-six-foot (66') right of way, except 24<sup>th</sup> Street SW which shows eighty feet (80') and 8<sup>th</sup> Avenue SW (40') (half-street).

One of the things the preliminary plat showed was a park land on Block 2. The park land has been removed from the plat due to Mandan Parks District declining the purchase of the one-acre lot (4/11/22 *Mandan Park Board Meeting*). Block 2 is showing three additional lots where that one-acre park was reserved on this preliminary plat. There are no changes in the right of way.

## **Easements & Utilities**

Easements shown on the plat include standard ten (10) and fifteen (15) foot utility easements and a twenty-five (25) to thirty-two (32) foot utility easement along the north property line of Lot 11, Block 2 and Lot 1, Block 3. The existing overhead electric power line parallel to 8<sup>th</sup> Avenue SW would be buried. The Development Team is working with Missouri West Water to determine what modifications are necessary to their waterline to align with the proposed development. Storm water ponds are included in the subdivision masterplan. Storm Water Plans are included in the masterplan and the developers are working on figuring out how those are going to work in some of them are from Keidel's Addition.

## **Zoning**

Lots 4-56, Block 1 and Lots 1-4, Block 7 are to be zoned R3.2 – Residential to allow for twin-home development. All other larger lots and blocks are to be zoned R7 – Residential. The zoning has been approved by the City Commission.

## **Adjacent Land Uses and Zoning**

Adjacent land uses include low-density residential to the north zoned R7 – Residential and agricultural lands to the east, south and west.

## **Findings of Fact**

### **Final Plat**

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary plat for the proposed subdivision that was approved by the Planning and Zoning Commission;
3. The proposed subdivision generally conforms with the Future Land Use Plan and other plans and studies;
4. The proposed subdivision is not located in the Special Flood Hazard Area or an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development,
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
6. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
7. The proposed subdivision would not adversely affect the public health, safety, and general welfare.



Staff has not received comments related to this item. A total of 73 letters were sent to adjacent property owners.

- Staff supports the proposed street/lot layout.
- Bismarck-Mandan Bike and Pedestrian Study recommends a connection be added along 4<sup>th</sup> Avenue SW. This could be an on-street facility (sharrow, bike lane).
- Staff requests that pedestrian access to the coulee east of this subdivision be considered with future phases and if feasible have easements added to plats to provide for access.
- A development agreement has been drafted for this subdivision.
- Ownership and maintenance of storm water ponds must be documented as undivided interest or other similar mechanism (to be further specified in Development Agreement).
- Additional phases of this subdivision are to generally follow the masterplan approved at the March 28, 2022 Planning and Zoning Commission meeting.
- The vacation of the recorded plat for Keidel's South Heart Terrace 4<sup>th</sup> Addition is scheduled as a Public Hearing at the May 3, 2022 City Commission Meeting. This will appear alongside the Final Plat and second consideration of the zone change ordinance (Ord. 1398). That vacation not be recorded unless this plat is approved.
- The lack of park space is in conflict with Goal 8, Policy 10 of the Future Land Use Plan. Section 109-3-2 (22) (d) indicates if the Park Board does reject the offer, it may not bear consequences on the chapter. (Exhibit 7).
- Street directional must be added to Cobblestone Loop (SW).

Planner Stromme stated that the Planning and Engineering staff recommended approval of the final plat for Keidel's South Heart Terrace 5<sup>th</sup> Addition and to enter into a Development Agreement similar to Exhibit 4. Representatives from the Development Team were present to answer questions.

Chair Robinson inquired if there were any comments or questions.

Commissioner Liepitz commented that there were some recommendations from staff listed in the report. He inquired if those recommendations will be incorporated into the plat or are they part of the Development Agreement? For example, such as the Bike and Pedestrian Study recommendation that a connection be added along 4<sup>th</sup> Avenue? And other items that were recommended and probably not addressed. Planner Stromme explained that the Bike and Pedestrian Study is something that can be evaluated later during the Street Improvement Project because at this time he did not think it would be warranted for the subdivision. The Park District indicated they do not want to have a shared use trail in the front of homes on 4<sup>th</sup> Avenue. A review of the Storm Water Ponds would be best captured in the Development Agreement which is something that can be added after the fact. Regarding the lack of park space, this Board, nor the city, based on the structure of how park land is to be developed is not empowered to add much to this situation. The two open-ended items would be to keep it in the city's consideration for infrastructure for the bike and pedestrian user's on 4<sup>th</sup> Avenue

and make sure it receives what is needed for the storm water infrastructure and that can be done administratively.

Chair Robinson again inquired if there were any comments or questions.

## **B. Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against a request from LH Holdings, LLP for consideration of a Final Plat for a subdivision to be titled Keidel's South Heart Terrace 5<sup>th</sup> Addition.

## **C. Close Public Hearing**

Chair Robinson again inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against the request from LH Holdings, LLP for consideration of a Final Plat for a subdivision to be titled Keidel's South Heart Terrace 5<sup>th</sup> Addition. Hearing none, this portion of the public hearing was closed.

## **D. Commission Action**

Chair Robinson inquired if there were any other questions or comments from the Commission.

*Commissioner Frank motioned to recommend approval of the request from LH Holdings, LLP for consideration of a Final Plat for a subdivision to be titled Keidel's South Heart Terrace 5<sup>th</sup> Addition and enter into a Development Agreement similar to Exhibit 4. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.*

***4. A request from Apex Builders, LLC for consideration of a variance from Sec. 105-4-2.2 (c) (d) – DF – Downtown Fringe (Dimensional Standards – Lot Width) and a minor plat for a subdivision to be titled Helmsworth – McLeans Addition, a Replat of Lots 1-5, Block 6. Said property is Lots 1-4 & the North 8' of Lot 5, Block 6 in Helmsworth McLeans Addition, Section 26, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota. Said property is in east Mandan, on the southeast corner of 13<sup>th</sup> Avenue NE and 1<sup>st</sup> Street NE.***

## **A. Staff Report**

City Principal Planner Stromme presented.

Apex Builders, LLC, is requesting approval of a minor plat and variance from Section 105-4-2.2 (d) – DF – Downtown Fringe, Dimensional Standards to allow for the minor plat to be approved as shown. The property is in east Mandan on the southeast corner of 1<sup>st</sup> Street NE and 13<sup>th</sup> Avenue NE.

## **Property History**

A minor plat and special use permit for multi-use shops were approved at the June 28, 2022

Planning and Zoning Commission meeting. A variance to allow for more than two (2) driveways onto this property was approved by the Planning and Zoning Commission. Since City approval, the plat was not recorded and construction commenced on the planned building addition.

### **Minor Plat**

The minor plat is .34 acres in size and would create 3 Lots in Block 1 for the purposes of selling individual business spaces. Forty feet (40') of right-of-way is shown for existing roadways. A shared access easement is shown on the plat to provide through access to all lots from the parking lot for all property owners to share access to and through the parking lot.

### **Variance**

The requested variance from Section 105-4-2.2 (d) – *DF – Downtown Fringe, Dimensional Standards* would permit the platting of Lot 2, Block 1 to be less than twenty-five feet (25') wide. The proposed lot is twenty-four and a half feet (24.5') wide. An additional component of this variance request would be to allow a future lot split of Lot 1, Block 1 that would create a lot (based on an existing wall) that is roughly four-hundred (400) sq. ft. less than what is permitted in this district. The request would be to allow the future replat to occur without another variance. If that occurs, it will allow for a 5.5 foot less width lot as seen in the Downtown Fringe which is roughly 400 sq. ft. less than the minimum lot size permitted in the Downtown Fringe district. He noted that these properties can be leased and there is no minimum size requirement that would need to be leased. This plat would allow these to be sold as individual parcels and a release would be required at such time. The variance requested would not only allow for the lots to be a half-foot less in width than was permitted and the applicant has requested that if in a future date they would like to flip Lot 1 into two lots and by doing so create an additional subdivided lot, they would like to do that without the need to get an additional variance at a later time, essentially to secure confirming today if the Board has already approved. Regarding Section 105-1-13 of the code, the approval of a variance is not linked to a timeline, there is no action that needs to be done within a year, thus, if the variance were to be granted today, if it were referenced in the future. Whereas a similar plat is only valid for one year, there is no expiration of this Board's recommendation tonight. The section of the code referenced has been included in the agenda documentation packet. The minor plat has everything included in it, noting that it is only the variance request in front of the Board at this time.

### **Findings of Fact**

#### **Variance**

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the DF – Downtown Fringe District.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought

by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

### **Minor Plat**

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

- This property has received business incentives including storefront improvement and Renaissance Zone.
- A lot that is less than twenty-five feet (25') would be permitted to be leased. This request would allow it to be sold as a parcel.
- Striped, on-street angled parking may be added on 1<sup>st</sup> Street NE. This would be installed and maintained by the applicant/owner.
- P&Z approved platting a lot smaller than allowed in MC – Industrial with Geiger Addition (December 2021) to create a lot for the cell tower.

A future replat is subject to Planning and Zoning Department review and may include additional evaluative criteria.

Planner Stromme stated that the recommendation is to review the above report, identifying a hardship, and modifying the findings of fact as necessary to support the motion of the Board's decision. Representatives from the Development Team were present to answer any questions.

Chair Robinson inquired if there were any comments or questions.

Commissioner Frank inquired if the one variance that is currently half-foot shorter than the minimum to be subdivided and sold off eventually at 24.5 feet as the minimum is 25 feet? Planner Stromme replied that one component of the variance request is to create a 24.5-foot-wide lot, the second component would be for in the future, the creation of an additional substandard lot that would be 5.5 feet less, or 19.5 feet compared to the 25-foot lot. Lot 2 would be contained within the building's addition. Commissioner Frank inquired if there would be any other conditions that would be initiated if they sold those off as units, for example, from a parking perspective? Is there any differentiation from that space – is the set up prepared to sell those off, overall, with the parking and access or will that create a roadblock? Planner Stromme replied that the Parking Ordinance has language that speaks to the continuing obligation for property owners to ensure that all the parking requirements for land use is contained on that property, is indeed contained on that property. When someone is looking at the space, the intended land use – unless there is action that this Board reviews such as a parking variance or a shared parking agreement, all the uses that are contained

within this building would need to have the parking provided on site for them. Commissioner Frank inquired if the this will impact any of the other requisites for this site? Planner Stromme stated that ownership or leasing of the building has no impact on the parking.

Chair Robinson inquired if there were any comments or questions.

## **B. Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against the request from Apex Builders, LLC for consideration of a variance from Sec. 105-4-2.2 (c) (d) – DF – Downtown Fringe (Dimensional Standards – Lot Width) and a minor plat for a subdivision to be titled Helmsworth – McLeans Addition

## **C. Close Public Hearing**

Chair Robinson inquired if there were any comments or questions. A second and third announcement was made to come forward to speak for or against the approval of a request from Apex Builders, LLC for consideration of a variance from Sec. 105-4-2.2 (c) (d) – DF – Downtown Fringe (Dimensional Standards – Lot Width) and a minor plat for a subdivision to be titled Helmsworth – McLeans Addition. Hearing none, this portion of the public hearing was closed.

## **D. Commission Action**

Chair Robinson inquired if there were any questions or comments from the Commission.

Commissioner Frank inquired about the 25-foot minimum for the lots and in this case is there anything that serves as a deterrence to allow a variance. What is the reason for the 25-foot width and what would be the potential impact if this request were to be granted? Planner Stromme explained that many cities, when making the switch from organic development to using grids, created lots that were 25 x 150 ft so there could be 24 of them on a block, Mandan included plats Helmsworth-McLeans original plat to show the 25-foot lots. The general idea would be to mirror the city's original plat with the ordinance is where it was thought to be originated. In terms of ill consequence there would be precedence that this Board would establish allowing a substandard lot that may be applied to future requests but until the zoning text would either be changed to allow that by rights, they would all come back to this Board for additional review, thus it would set a precedence as the main consequence.

Commissioner Frank inquired about the deviation from the 25 feet for existing properties versus new construction, in particular, for existing properties that have already been created and there is a line to subdivide the lot and sell it off. She requested distinguishing between those two scenarios. Planner Stromme explained this is a mix of both scenarios, where it pulls from the original plat of 25-foot lots and switches it to a new development and then over to another part of the city. He said he would recommend looking at them diagnostically as one in the same. There is no provision in the city code that allows to look at situations differently based on location, thus he recommended looking at it as if it were any new

development. At the time this structure was permitted it was not entirely decided to be sold and it would be beneficial if the 25 feet was clarified. Commissioner Liepitz commented that by looking at the property history, there was a plat and special use permit approved on June 28, 2022. And then a variance of two or more driveways approved July 20, 2021 and the plat has not been recorded since then? He requested an update on the property of what has changed as to why those applications that were approved did not meet the current needs of the property or what's transpired since those dates. Planner Stromme deferred to the applicants to clarify the following, at any point stating that it is his understanding that it is a fluid development for multi-use shops and a special use permit for multi-use shops was requested and granted for a more traditional shop condo development. It has now switched to being a more traditional retail frontage with store front-oriented design with a public right of way. The driveway variance was mainly allowed for existing driveways to the alleyways off of 1<sup>st</sup> and 13<sup>th</sup>. The plat has not been recorded because there are business incentives including store front renaissance zone coming from the state down. There is paperwork yet to be completed. This request is from people to be sold and documents need to be referencing descriptions so this plat will create what they need so the renaissance zone application can be updated for transferring from the applicants to future owners. The plat has not been recorded because the plat did not contain sufficient information for the incentives that the property has perceived so that each owner has what they need to move forward. Commissioner Frank directed a question to the applicant – is the request for a variance for a half-foot - is that an after thought of the original concept that was brought forward?

Doug Larson, Apex Builders came forward and explained that when Apex first started this project, they did not have a buyer in mind. The initial plan was to build them out and sell them. Then a buyer came by who stated they already have a business in Mandan, however, t he was interested in applying for this. Doug Larson said he was not tracking the 25-foot, exactly, so he inquired as to what the applicant needed and he would keep what was left over. Apex Builders was not going to necessarily set up their shop in the new portion rather the plan was to set up shop on the existing portion. That applicant should be open for business in about a week. Once she took what she needed, Apex took what was left over and at this time, Apex has no plans of selling anything other than the applicant's portion which is well over the 25- foot. But there is an existing wall so he said when Apex came to the P & Z Commission to ask for this re-plat, they decided to divide all four sections into their own. The smaller office and the bigger shop area have a shared door. That explains why they are not requesting to break the sections up separately. The 6-inch overlook was intended to help out that applicant to provide her with what she needed. Commissioner Frank commented that it might not be possible to separate it into four separate saleable shops. She inquired if Doug Larson would have an opportunity to reconfigure what will spill over into the shop area and then essentially disregard the request for that space that deviates substantially from the 25-foot minimum? Could you get 3 rather than 4 out of the existing space based on where the walls are so they would all conform? Doug Larson replied that to add 6 inches would be very difficult because that would be the structural wall of the existing business. If the side that would be furthest to the east that is 19.5 feet, if someone would want to purchase or rent that or if they would eventually buy that, Apex would be precluded from selling it. It would be just as difficult because of where that wall is on that shop portion to move it without tearing the whole building down and starting over. The foundation of that building, the supporting walls of that building are 19.5 feet and that is where the next one starts. That is why Apex is requesting that variance now versus coming back at a later time.

Chair Robinson inquired if there were any questions or comments regarding this matter for the applicant or for Planner Stromme.

Commissioner Frank commented that she is supportive of granting ordinances in order to create opportunities for people however this one, in her opinion is difficult stating that it is tough because it would be favorable if it all worked out and each of the individual units could be sold as it speaks to ownership versus leasing a space and an investment that people would make when occupying it. At one time there probably was an opportunity to divide the space so that there would automatically be two to be split, however, the one that is located on the east of the stretch because that is a complete departure. She said she thinks there is an opportunity to move forward leasing the space as is. There is an option with the far west unit being an adequate width to sell. Commissioner McLean said he has a problem with the east unit, that being half-foot, and the one that is problematic for the future that is possibly setting a precedence at 19.5 feet. Commissioner Frank commented that sometimes the pressure is on when there is an existing offer, however, she does not think it to be appropriate to kick the can down the road, however, knowing that when they say there is a chance for the 24.5 feet is something, rather than a full approval until there is a genuine interest expressed in purchasing that space which at this time, defers her to making a decision until there is something viable in front of this Board. Commissioner McLean inquired of Doug Larson if anyone has given an LOI for the property, intent to purchase? Doug Larson replied that on the east, "no". He clarified that the 24.5-foot area that is being discussed would be Apex Builders home office and they will operate that separate from the other one, thus he said he could see some issues with insurance premiums and issues of that nature. It is not sure at this time that Apex Builders will own everything other than the piece of property furthest to the west that completely meets all of the requirements. Lot 3 is being proposed at 24.5 feet and is where Apex home office will be. Lot 2 is the one being proposed as a lot that someone may potentially purchase however, Lot 1 will be of greater potential for being purchased. The best scenario is for Apex to work out of Lot 3, own Lot 2 for storage-type, and Lot 1 could be sold if someone was interested that being because it is a corner lot location and the building is a nice size for a company. Planner Stromme clarified that the lots described in Exhibit 4 the future lot split, and the plat for Lots 1-3 would be contained in Exhibit 3 and are included in the packet.

Commissioner Frank referred to the suggested options for motions for Lot 3, Block. Planner Stromme stated that both the motion to approve and the motion to deny include a provision that Lot 3 should be split and that should read Lot 1, Block 1. Commissioner Frank inquired if they each require approval of Lot 3 being split? Lot 3 is the one that had more than enough width. Planner Stromme stated that he has a typo in the documentation stating that Lot 1 shown on the plat is the one that would be split, not Lot 3. Exhibit 4 shows that Lot 1 would be split. If a motion is to be made it would allow Lot 1, Block 1 to be split to create an additional lot.

Commissioner Frank reiterated that Lot 1, Block 1, would create a substandard but how is it substandard when it's 69 feet wide? Planner Stromme referred to Exhibit 4, they would like to split that in the future and in doing so it would create a lot 19.5 feet wide. If you were to reference a lot on a property in the future the correct reference will be Lot 1, Block 1 Helmsworth Addition. Lot 1 is 69 feet wide and on the east end of the property the existing

office – if that were to be created to be its own lot it would become 19.5 feet. It is written in the report for Lot 3 to be split and it should say Lot 1, Block 1. The motion would be to approve the plat or deny the plat as shown, so the creation of Lots 1-3 and the condition for a future replat to create an additional substandard lot should allow Lot 1 to be split in half for it to be split for the creation of additional lots. The applicant requested that so that if someone wants to buy it, they can say that it has been approved, and it would just need to split for that to happen. Commissioner McLean inquired that if the P & Z Commission approves or denies this request – the motion is being tied into two? If this is approved, Lot 2 at 25.5 feet, will allow them to have that half-foot variance, correct? Planner Stromme indicated that is correct. Commissioner McLean also commented that the motion is also splitting Lot 1. Planner Stromme replied that both motions include the provision to approve the substandard or deny the substandard lot and approve or deny the future creation of an additional substandard lot. This will cover the two actions in one motion and this Commission is also able to suggest a new motion.

Commissioner Frank motioned to deny the variance request for the undersized lot. She inquired if the Commission will still have to approve the plat? Planner Stromme stated that the plat as shown cannot be approved without the receipt of a variance. The Commission would be unable to approve the minor plat unless the applicant is relieved from the provision in the ordinance for a 25-foot width lot. Commissioner Frank inquired if it would be appropriate to approve the plat with a modification to eliminate the 20-foot lot? Can the Commission approve Lot 3 which is the most western lot on the plat and the rest would remain Lot 1? Planner Stromme stated that he did not believe that would be possible, however an optional route would be to bring this matter to the City Commission since they would approve the minor plat when it includes a variance to it. They need to have a recommendation from the P & Z Commission to review a variance but if there were no variance included with tonight's request, he would take this directly to the City Commission. The reason it is before this P & Z Commission is because they need relief from a provision in the Ordinance for the 24½ foot lot to be created for it in the future or by someone else.

Planner Stromme stated that the motions provided would approve or deny this plat and Lot 1 to be split in the future and this Board has the option to approve the plat but not the future split which is an option as well. Commissioner Frank commented that this Board is approving the plat at 24½ foot which is a variance of that. Planner Stromme stated that is correct. Mayor Helbling commented that if this action were to be piecemealed, what is attempting to be done is to let the project go forward by making the westerly lot whole and the leave the other part as it stands today.

Commissioner Frank stated that she would like to deny the variance for both smaller units but still allow the plat to go to the City Commission. Planner Stromme clarified that he does not need any action from this Board to permit this to go to the City Commission if all that were to be done were to create what appears as Lot 3, and keep the rest of the property as an additional. That's a completely legal subdivision that he would take to the City Commission without the P & Z Commission's review. It is being presented here because Apex want lots that are smaller than the ordinance allows.

Chair Robinson inquired if it would be beneficial if the P & Z Commission denies the request as recommended and the make another motion to advance it as is?



Commissioner Frank said that if the Board denies the request, they still have an opportunity to present it in a way that meets requirements. Planner Stromme stated that by denying the variance the P & Z Commission would be accepting the Findings included in the report in that it would be stating there would be no hardship identified and the request to deny the substandard lots would effectively be denied. There is nothing stopping them from doing a legal subdivision in the future and it will likely be presented to the City Commission and not come to this Board provided everything meets ordinance. Commissioner Frank stated that they still would have the opportunity to create the space like it was shown and could not sell the spaces rather they could lease the spaces. Planner Stromme stated that is correct.

Chair Robinson stated that with that understanding, is there a motion?

*Commissioner Frank motioned to recommend denial of the variance request (to Section 105-4-2.2 (d) – DF – Downtown Fringe, Dimensional Standards of the City Code of Ordinances to allow Lot 2, Block 1 to be platted as shown on the minor plat for Helmsworth-McLeans Addition, A Replat of Lots 1-5, Block 6 and allow Lot 3, Block 1 to be split to create an additional substandard DF – Downtown Fringe lot in the future). Commissioner Horn seconded the motion.*

Chair Robinson asked if there was any discussion on the motion?

Commissioner Liepitz commented that there were Findings of Fact relative to the variance presented in the report from staff and the question to the motion whether or not they want to save those Findings of Fact relative to the motion to deny. There are findings of fact in the report but they weren't referenced in the motion and he believes it is important to the applicant to site a basis for approval or denial of the variance, thus, if it is denied, it would be helpful for the record to reference the reasons for that denial. Commissioner Frank cited the variance Findings of Fact are:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the DF – Downtown Fringe District.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

*Chair Robinson inquired if there were any further questions or comments on the motion before the Commission? He said that a "yes" vote would follow the motion to deny. The motion is to move to recommend denial of the variance. He called for a roll call vote. Upon vote, the motion passed unanimously.*

## OTHER BUSINESS

City Principal Planner Stromme presented the following for future consideration:

1. *Update on research into zoning ordinance language for the following uses:*
  - a. *Lower Heart River Water Resource District Levee.* This would be an overlay to the City Code for properties that are 500 ft. within the levee. It was recommended that the operations and maintenance manual would have more review of project adjacency to the levee after the improvements are done. The recommendation would be to add text that identifies clear zone, etc. and that anything occurring within a certain distance of the levee would be subject to review by the Lower Heart, possibly including approval. Public Right of ways would need some type of Memorandum of Understanding with the Lower Heart. More to come later.
  - b. *Group Dwellings are permitted in city ordinances in two ways.* A group representing a developmental disability is defined in the NDCC and is permitted in all districts that allow residential uses however, ND Health Department has started Agency Adult Foster Care. Under the current provisions he cannot provide a group home, something that is not a developmental disability in a residential district. The request would be to align with the new state statute as it relates to group dwellings for Agency Adult Foster Care to allow them in additional residential districts. The ordinance allows group homes without any additional qualifier or code reference to the state that specifies a certain group. Group dwellings are open-ended in RM Downtown Fringe but not in R7 or R3.2. He cannot administratively allow those types of group dwellings to move forward unless the text is changed. The request is to update the code to allow additional types of group dwellings in additional zoning districts in Mandan. The NDCC has additional qualifications that he would defer to per the ND Health Department, residential in nature, close to businesses. If there is buy-in from this Commission he will work on a Text Amendment to be presented at a later time that would allow this sort of group setting in additional zoning districts. Chair Robinson inquired if there were any questions at this time. Hearing none, Planner Stromme will proceed accordingly.
  - c. *Electric Vehicle Charging:* Cities are required in the minimum park development and they will need to meet city and state requirements for safety concerns anywhere parking would be permitted.
  - d. *Automobile Parking:* Some cities in the state allow for mixed use components to their project like parking adjacent to corridors. He will like into possible credits that would make redevelopment projects easier in the community's existing core parking area district.
  - e. *Data Centers:* There is a lot of support from state leaders to get these into our state and certain industrial areas is where these would be considered.
  - f. *Commercial Agricultural Greenhouses:* Other cities are looking at this and it may be appropriate to add to the City of Mandan as time allows. There are concerns with not having shades and casting of light during the night affecting people and wildlife.

- g. *Gateway Overlay District*: With regard to the Memorial Hwy Gateway District, it may be appropriate to review this again. A section that is missing is the Old Red Trail roundabout to the freeway at Mandan Avenue. The Gateway is set up for prime entrance to the city. It would be appropriate to put in controls addressing the Old Red Trail area.
- h. *Multi-Use Shops*: There is a high demand in this region for shop condos.
- i. *Child Care Facilities*: Another item the state will be allowing will be related to child care facilities to be located in homes which has already been in place for 18 children but now the state allows up to 30 children to be in a daycare in a home. This would not be a daycare that someone resides at, rather it would be a residential property purchased for the purpose of running a commercial childcare facility. The intent of bringing this forward to get feedback from this Commission on this matter as it relates to homes located in commercial districts.

Commissioner Frank commented on the Child Care Daycare with a limit of 18 children increased to 30 children is concerning because that large of a daycare could be in a residential neighborhood. Currently the only way to limit the total number of children would be based on square foot requirements? Planner Stromme explained there are two ways that child care is conducted in Mandan and that is at-home daycares where there are 12 in a home and it is residential in nature as an incidental use. This would be commercial daycares to operate in the form of a house so it looks like a house via a commercial facility. He explained this is a request for guidance if it is something this Commission would want to see more or less of wherein people would convert homes in commercial areas from residential to commercial. The city ordinance would cap the number of children. The question is, would there be support for the city to look into conversions for residential to commercial zoning locations for child care purposes? He suggested regulations such as to not allow them in a neighborhood daycare of 30 children wherein commercial locations are on arterial ways. Commissioner Frank agreed this would be a way for the city to regulate where those daycare facilities would be located throughout the city. Planner Stromme recommended incorporating language that references the definition of what is allowed on collector roadways. He offered to research this matter and bring back findings to a future meeting.

Planner Stromme stated that at some point in time, the above items will come back in the future for review and discussion, some sooner than others.

2. *Community Clean-Up Day is scheduled for Saturday April 30<sup>th</sup>.*

Planner Stromme reported that the rescheduled date for the annual Spring Cleanup Day has been set for Saturday April 30<sup>th</sup>, weather depending. If there are changes to the schedule, please go to the [cityofmandan.com](http://cityofmandan.com) website.

3. Chair Robinson stated that he received a notice from Commissioner Otto that he will be pursuing a move to Bismarck and at some point, his position on this Board will need to be replaced. Commissioner Otto will continue to serve until he relocates or until his replacement has been found.

## **ADJOURNMENT**

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

The meeting adjourned at 7:06 p.m.