

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

Commissioners Present: Huber, Mudder, Horn, Intveld, McLean, Hammond, Gardner, Renner and Chair Robinson. Also present, Jordan Singer, Building Official.

Absent: Leingang, Smith, Mayor Froelich and Nancy Moser, Adm Assistant.

B. CONSIDER APPROVAL OF MINUTES

1. *August 25, 2025 Minutes. Commissioner McLean motioned to approve the August 25, 2025 minutes. Commissioner Intveld seconded the motion. Upon vote, the motion passed unanimously.*

C. PUBLIC HEARINGS

1. *Consider a preliminary plat for Keidels South Heart Terrace 5th Addition and a zone change from R7 (Residential) to R3.2 & R7 (Residential).. Rachel Laqua, Interim Planner presented. She requested this matter be tabled until the October 2025 meeting. Chair Robinson stated that this item has been posted. He opened the meeting at this time for comments or questions.*

Commissioner Mudder commented that it states there are minimum and maximum standards for the cul de sac. The city needs to be sure that there is ample room for fire trucks, emergency vehicles and buses to access the homes. He stated he lives in a cul de sac and those type of vehicles have damaged the curbs and it is costly to fix the curbs when that happens.

Chair Robinson commented that the suggested motion recommends postponing this matter until the October meeting. He stated that there was a similar motion at the August meeting posting this matter until this (September) meeting. He questioned if the motion should state that this matter be postponed until a future meeting when both parties have completed their meeting(s) of due diligence? Ms. Laqua agreed to revising the suggested motion to state as recommended by Chair Robinson.

Statement/Purpose

This is an application for a preliminary plat and zone change in the NW/14 Section 3, T138N R81W, City of Mandan, Morton County. The plat, to be named Keidels South Heart Terrace 5th Addition, is a continuation of an approved subdivision (Keidels South Heart Terrace 3rd Addition) to the north. The request includes a zone change from R7 (Residential) to R3.2 & R7 (Residential) for proposed Lots 1-10 and 14-19 of Block 1 and Lots 1-12 of Block 2. The property is located south of 19th Street SW and east of 8th Avenue SW.

BACKGROUND/ALTERNATIVES

Property History

This proposed plat closely follows an approved but vacated subdivision that went by the name of Keidels South Heart Terrace 4th Addition.

Project Overview

The proposed plat shows townhouse development on the west side of the plat, with some lots accessing off 8th Ave SW, with the remainder of the lots being single family home lots. There are several culs-de-sac within the subdivision, due to topography. The plat also includes an easement for an overhead

transmission line. The plan includes five (5) independent phases of infrastructure development.

Preliminary Plat The plat includes:

- 106 lots; 16 R3.2 zoned lots; 89 R-7 lots; 1 stormwater lot
- 47.82 acres

Connections to the property to the south are found at 7th and 4th Avenues. One additional access onto 8th Ave SW is shown. All lots meet minimum size requirements. All streets meet maximum grade requirements, and cul-de-sacs meet minimum turnaround and maximum length requirements.

Adjacent Properties Zoning, Land Use, and Future Land Use

Adjacent properties to the southwest are zoned R-7 and are annexed into the city. Properties to the southeast are zoned Agricultural and are in the ETJ. Properties to the east are zoned PUD and are in the preliminary platting process. Properties to the north are zoned R-7 and are developed with single family residential. Property to the west is zoned Agricultural and is in the ETJ. The future land use plan indicates this property as low density residential. The future corridor plans show a collector street in this area, though there is little development potential to the south given the owner's plans for the property to the south, and land to the west is owned by NDSU, therefore making a collector in this area unrealistic and most likely unnecessary.

Additional Information and Public Outreach

The application and fee were received on July 25, 2025. Letters were sent to eighty-three (83) adjacent property owners.

Staff Comments & Updates Needed

- Staff has requested that the owner and applicant work with the neighboring property to the east, to be developed as Clover Grove PUD, to provide a valuable cross-connection point between to the two subdivisions. Neither subdivision will meet access management requirements at full build-out without the cross-connection between subdivisions. The two owners have agreed to work together to connect streets and sewer. The connection street will be added on the east side of this proposed subdivision where the proposed cul de sac on the southeast side is shown. There will be lots added to the subdivision to accommodate this connection.
- The plat shows an overhead transmission line which will make Lots 21, Block 2, Lots 1 and 16, Block 2, Lots 1, 22 and 15 of Block 4 very narrow and potentially unbuildable, though they meet minimum width requirements.
- The plat will dedicate 40' of additional ROW on 8th Ave SW, matching the existing street section to build within 73' of ROW.
- 8th Ave SW will need to be extended to the intersection of Cobblestone Loop SW, and will need to include sidewalks on the east side.
- The Park District has requested a park between 4th Ave SW and 5th Ave SW and is working with the owner.
- The legal description of the plat should include 'part of Government Lots 3 &4 and the NW1/4 of Section 3, T138N R81W.
- Phasing plan should be shown and approved for preliminary plat approval.
- Stormwater lot in this plat and the prior plat should be held in undivided interested between benefiting

landowners; will need to be clarified in Development Agreement.

#### 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 for projects identified in City masterplans;
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 the proposed 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.

Planning Staff recommended tabling this preliminary plat and zone change request until a future meeting, in order to allow time for both parties to turn in preliminary plats to address cross connection concerns between the two properties.

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

#### **Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for a preliminary plat for Keidels South Heart Terrace 5th Addition and a zone change from R7 (Residential) to R3.2 & R7 (Residential).

The recommendation from Rachel Laqua, Interim Planner Director was to table this matter until a future meeting.

Chair Robinson inquired if there were any comments or questions.

Abe Ulmer, an engineer from ISLE, came forward and stated that they are working with a neighbor to try to solidify where a connection point would go. The grade is an issue in that area. He is working with consultants on this project in order to come up with a solution as to what is a clear and best situation for both parties. He stated that with regard to the cul de sac, it will be designed as a 98 ft diameter, which is the standard for city fire code purposes.

Chair Robinson provided a second and final invitation to come forward.

Chair Robinson inquired if there were any comments or questions.

## Close Public Hearing

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

## Commission Action

*Commissioner McLean moved to recommend tabling this request for the preliminary plat for Keidels South Heart Terrace 5th Addition and a zone change from R7 (Residential) to R3.2 & R7 (Residential) until a future meeting to allow additional time for both parties to turn in complementary preliminary plats to address cross connection concerns between the two properties. Commissioner Mudder seconded the motion. Chair Robinson called for a roll call vote: Huber: Yes, Mudder: Yes, Horn: Yes; Intveld: Yes, McLean: Yes, Hammond: Yes, Gardner: Yes, Renner: Yes, Chair Robinson: Yes. The motion passed.*

2. Consider Final Plat for Kahl Addition. Rachel Laqua, Interim Planner presented.

### Statement/Purpose

Consider Final Plat for Kahl Irey Addition.

### BACKGROUND/ALTERNATIVES

The Planning & Zoning Commission recommended approval of the preliminary plat and master plan at the July 28, 2025 meeting. The preliminary plat and master plan were approved by City Commission at the August 19, 2025 meeting. The September 4, 2025 pre planning meeting recommended the subdivision to be renamed to avoid confusion with another similarly named subdivision. Therefore, the updated plat name to Kahl Irey Addition, along with spelling edits will be shown on the plat's final version. That “renaming” was the only revision made since the preliminary plat was approved previously and will be included on the master plan. This will go to the City Commission following this, if approved by this Board.

This proposed final plat is located in the SE1/4 of Section 32, T139N R81W, 5th PM, Morton County, ND, within the ETJ. This portion of the SE ¼ of Section 32 has been previous partially platted as Lot “A”, and has four existing lots, Lot 1 of Lot “A”, Lot 2 of Lot “A”, Lot 3 of Lot “A”, and the remainder of Lot “A”. The applicant proposes to add two additional Lots, Lots 1 and 2 of Block 1, both containing 1.5 acres. Staff requested that a master plan be created for the remainder of Lot “A” in the NE1/4SE1/4, though not the full extent of Lot “A”, in order to have a future understanding of access and development potential. This has been included in the application and shows future roadway access surrounding the property as well as an internal 66’ road right of way, with a potential for eight (8) additional large residential lots.

Preliminary Plat Details:

Total Area: Three (3) acres to be platted into Lots 1 and 2 of Block 1.

Configuration: Two (2) lots within one block.

Access

Access to both lots is via a 40' wide access easement running west across Lot "A" from existing 22 ½ Avenue through Lot 1, Block 1 to Lot 2, Block 1. A culvert may be required for this access during the driveway and building permit process.

Zone Change Request: No zone change request is being made at this time.

Adjacent Zoning, Land Use, and Future Land Use

Adjacent Zoning: North/South/East/West – Agricultural

The future land use plan designates this area as public land, and is shown outside the 2030 growth boundary. The very low-density residential nature of the development should align with this.

Public Outreach and Application Details

Application Received: August 22, 2025; Application Fee: \$450.00; Notification letters were sent to three (3) adjacent property owners.

Findings of Fact

Final Plat

1. All technical requirements for approval of a final plat have been met;
2. The proposed subdivision generally demonstrates an ability for the property to align with the Future Land Use Plan and other plans and studies;
3. 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;
4. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
5. The proposed subdivision is generally consistent with the master plan, other adopted plans, policies and accepted planning practice; and
6. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

City Staff recommended approval of Kahl Ireys Addition Final Plat.

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

**Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for the Kahl Ireys Addition Final Plat.

Chair Robinson provided a second and final invitation to come forward.

Chair Robinson inquired if there were any comments or questions.

### **Close Public Hearing**

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

### **Commission Action**

*Commissioner Renner moved to recommend approval of the Final Plat for Kahl Irey Addition. Commissioner Intveld seconded the motion. Chair Robinson called for a roll call vote: Huber: Yes, Mudder: Yes, Horn: Yes; Intveld: Yes, McLean: Yes, Hammond: Yes, Gardner: Yes, Renner: Yes, Chair Robinson: Yes. The motion passed.*

### 3. *Consider an amendment to a Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition*

. Rachel Laqua, Interim Planner Director presented.

#### **Statement/Purpose**

Consider an application for amendment of a special use permit for shop condos on Lot 1, Block 1, Bridgeview Bay Addition. The amended special use permit seeks to update the approved site, building and landscape plan originally approved via Special Use Permit on September 17, 2024.

#### BACKGROUND/ALTERNATIVES

##### Overview of Request

Lot 1, Block 1, Bridgeview Bay Addition, is situated in Section 6, Township 138N, Range 80W, City of Mandan, Morton County, North Dakota, along the Missouri River at the eastern end of McKenzie Drive SE.

##### Property History

The property located at 2600 Marina Road SE is currently zoned CB – Business Commercial. The existing special use permit was approved at the September 17, 2024 City Commission meeting. The initial application, submitted in December 2023 was recommended for approval, contingent upon resolving site plan issues at the May 2024 Planning and Zoning.

Commission meeting. The applicant then requested a variance at the August 26, 2024 meeting of the Planning and Zoning Commission. The Commission delayed a decision on the zoning variance, which sought a reduced-width screening buffer between the property and a neighboring residential lot, as required by the City's Gateway/Buffer ordinance. By September 2024, the changes to the site plan meant

a variance was no longer needed. The special use permit was approved by City Commission on September 17, 2024. That special use permit allowed for the construction of multi-use shops, specifically for three (3) structures with eighteen (18) multi-use shop condos on the property:

- One structure with seven (7) units – north unit
- One structure with five (5) units – east unit
- One structure with six (6) units – south unit

At the time, the intention was to have fifty-six (56) parking spaces based on the declared uses of retail and office. The application showed thirty (30) feet of open space, four (4) rows of conifers and a fence. The permit also required landscape buffering along the south property line that adheres to the City of Mandan Gateway Screening requirement. The approval of the special use permit was granted contingent upon a stormwater management plan and City review of the condo declaration. The current application shows:

- One structure (north) with six (6) units
- One structure (east) with six (6) units
- One structure (south) with five (5) units

The landscape buffer to the south shows two (2) rows of conifers in twenty (20) feet of open space and a proposed fence. While they are reducing the number of units, the building size, while not clearly shown, has appeared to increase on both the east structure and south structure. Staff has not reviewed a complete landscape plan, but review of the provided plan only shows meeting five (5) landscape points, not six (6). The change in development pattern requires this update to the special use permit amendment.

#### Amended Special Use Permit Request

The applicant provided answers to the required questions below with their special use permit application.

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

#### Staff Review

Staff voiced concerns regarding applicant continuing to meet other requirements in the original special use permit and request a detailed landscape plan to determine proper buffer requirements are being met. The Staff recommendation is that if approved by the Planning and Zoning Commission, the applicant be required to provide a detailed building and landscaping plan prior to City Commission review.

#### Adjacent Properties Zoning, Land Use and Future Land Use

- Current and proposed zoning is CB - Commercial and the property is within the Gateway Overlay district.

- Adjacent properties to the north are zoned RM – Residential and CB – Commercial and consist of a marina and restaurant. To the west the property is a CB – Commercial zoned marine sales dealership and to the southwest an RM – Residential zoned multifamily residential development. To the south, there are single-family homes zoned R7 – Residential. The property is immediately on the west bank of the Missouri River.
- The City’s Future Land Use Plan recommended commercial development on this property. The proposed land uses have been declared to be commercial and personal recreation/storage.

#### Additional Information and Public Outreach

- The Application and fee of \$450 was received on August 22, 2025;
- Letters were sent to six (6) adjacent property owners; Staff received one objection regarding the request. An email was or will be sent to the Planning Commissioners regarding concerns with the objection received.

#### Findings of Fact

##### Special Use Permit

- ~ Will the proposed use be designed, constructed, operated, and maintained to be compatible in appearance with the existing or intended character of the neighborhood? *Staff have concerns regarding whether the landscaping plan fulfills the buffer requirements in the Gateway overlay district.*
- ~ Will the proposed use involve activities, processes, materials, equipment, or conditions of operation that will be incompatible with the neighborhood due to the production of traffic, noise, smoke, fumes, glare, or odors? *Uses are limited to CB – Commercial district per the original special use permit, with noise-producing business-related activities limited to between 6:00am and 10:00pm.*
- ~ Will the hours of operation of the proposed use be different than the adjacent uses? *No.*
- ~ Will the proposed use require exterior lighting of a type and intensity greater than the adjacent uses? *No.*
- ~ Will the site of the proposed use have sufficient area to provide the parking required for the use? *Yes.*
- ~ Will the proposed use require adjustments to the normal lot size, height, and setback requirements of the district? *No.*

#### RECOMMENDATION

City staff recommended review of the special use permit for Lot 1, Block 1, Bridgeview Bay Addition (2600 Marina Rd SE) and materials provided by the applicant and staff, future land use plans, zoning ordinances, and modifying or accepting Staff’s findings of fact as necessary to support the motion of the Board, with any potential approval being contingent on requirements that the applicant demonstrate the ability to abide by all requirements of the original special use permit and provide a detailed landscaping plan to the city prior to the final approval by City Commission. This recommendation was drafted so that staff could meet with the applicant to have a better understanding of the plan, however, city staff has not had the opportunity to meet with the applicant. Ms. Laqua stated that staff does not believe this request meets the requirements of the landscape plan at this time.

Commissioner Mudder inquired as to what changed from last year to this year? Ms. Laqua replied that the city is somewhat confused wherein she stated the minutes and approvals have been reviewed. They found that what was approved were the numbers that were included in the memo (she did not have the

original site plan in there) and the units were smaller, thus, the units that are on the site plan that is in the packets represent some of them being two (2) units, thus, in that same space that you see one (1) unit, it was two (2), split vertically. Commissioner Mudder commented that the explanation is that the units changed from the original plan to now? Ms. Laqua replied that yes, the unit numbers have changed and they do appear in the south building to have gotten larger since it is showing a 20 ft. buffer on the south side where there was a 30 ft. buffer. The only place they think the 20 ft. had gone was if the building got larger, however, staff has not had the ability to confirm that yet.

Commissioner Intveld inquired if there are two (2) concerns in question: (i) Landscaping? (ii) The size of the building against what the city code may be? Ms. Laqua replied that she assumes that it meets city code based on the allowances within the code; and the size and the parking possibly meets city code, however, staff has not had sufficient time to confirm that.

Commissioner Huber inquired if it would meet the setback requirements with the 20 ft. buffer instead of the 30 ft. buffer? Ms. Laqua replied she is uncertain of the setback requirements.

Chair Robinson commented that when reviewing Attorney Oster's opinion letter, he believes the footprint does cut into what was the intended buffer. Ms. Laqua concurred that is her understanding as well.

Commissioner Gardner stated he has one question regarding the six points of landscaping, one would be the two rows of trees; one would be a fence; What would the other five or six points be that have not been met? Ms. Laqua stated she does not know the answer to that question. Commissioner Huber commented that Attorney Oster's letter at the last paragraph of page 1, it speaks to the separation between buildings, thus that distance of separation answers that.

Commissioner McLean inquired of Ms. Laqua if staff needs additional information in order to provide an end run? Ms. Laqua stated that she would prefer additional time in order to gather more information to provide an adequate explanation as to what does or does not meet city code requirements. Commissioner McLean inquired if Ms. Laqua's wish before the Board is to deny this request or table the request? Ms. Laqua replied that she does not have an answer to that question. She stated there are neighbors and the applicant present who may want to come forward to comment. Commissioner Mudder inquired about the minutes that this Board approved of the Special Use Permit, are those available or can someone get them? (He noted that Nancy Moser is not present at this meeting and he does not want to put Building Official Jordan Singer on the spot to get that info.) Ms. Laqua replied that the website was currently down.

Official Singer stated that he is attempting to pull the information up and will share it if he can access them.

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

### **Open Public Hearing**

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for an amendment to a Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition.

Wade Vogel came forward to speak. He stated that he agrees that the information Ms. Laqua provided has all been correct. He stated that he is here to request more space on Building #1 while at the same time cutting some space on some space on the other units. He testified previously on May 29, 2024, to request a Special Use Permit and that was approved. He has a copy of what was submitted in the minutes and approved. In review of the diagram presented, Building #1 is the south unit. Building #2 is the unit to the north. Building #3 is the river unit. In that application package from May 29, 2024, when it was originally discussed, this diagram map is what was submitted. He pointed out that the number of units The “x’s” marked on the diagram depicted, indicate the units that we’ve deleted and the dark black lines depict combining the originals, they were two units each, and they were combined into one unit. This did not have the specifics if it was 15 ft, if it was 20 ft., but he had 58 ft. deep there originally. We are now at 50 ft. deep so there has been 8 ft. taken off that building. The building that was approved at the City Commission meeting was the one where there was only 40 ft. deep on Building #1 which is the building to the south. To proceed with the project, they are getting headwind from the former City Planner (Andrew Stromme) and so in order to move forward with the project, they moved that building back. They did not move the building; they took it from 58 ft. down to 40 ft. that gave them a 30 ft. buffer. They removed the first unit on the south side on the river. That is what was presented to the City Commission and that’s what was approved.

Chair Robinson clarified that when we refer to ‘seek minutes’, we should be looking at the City Commission meeting minutes, not the Planning and Zoning Commission meeting minutes. Mr. Vogel confirmed that what he outlined above, was approved at the Planning and Zoning meeting, not the City Commission meeting. He explained that when he went to the City Commission again, he met with the former City Planner (Andrew Stromme) and he was told that the ordinances were going to be re-written (in 2024) and he believes there was an effort to get that accomplished to get that completed, however, he does not believe it was completed. If the ordinances would have been re-written to what he was led to believe, he would not be here tonight because he would have met the criteria of the new (revised) ordinances. That was not done, so he had to come back with a request to revise the Special Use Permit. He stated that the request presented now is to review the Special Use Permit to allow him to have two (2) layers of trees on the south side and a fence, which to answer the question, that’s the three (3) buffer point. He needs six (6) buffer points so the ordinance as written says he can use one (1) point for each 25 ft. of separate between buildings. Between the buildings he has 60-65 feet between his buildings so he should receive at least one (1) buffer point for every separation between those units. He did send a letter to the city and requested Attorney Oster’s legal opinion and that is the opinion that was presented to this Board by Commissioner Huber. To ask the question, how did he get to six (6) points: he has two rows of trees and a fence and he has 175 ft. of separation combined between these units. He is asking for some of that separation to be allowed pursuant to the ordinance. The ordinance states: Buffer points must be satisfied through a combination of the following: One (1) point for each 25 ft. of separation between buildings; One (1) point for a single row of conifers six (6) ft. in height; One (1) point for a solid fence or wall at least six (6) ft. in height; One (1) point for a berm at least three (3) ft. in height; One-half (1/2) point for overstory trees; and One-half (1/2) point for hedge or shrub at least 4 ft. in height. He believes his proposed plat exceeds these requirements as laid out in the ordinance.

Commissioner Huber inquired if this would be an appropriate juncture to ask for a clarification? It is her understanding that with regard to those buffer points that those were written in reference to the subject building and the building on the adjacent property, not separation of the buildings within the site itself because this is talking about buffering it from the property to the south or the residential buildings. That

would be the distance that would be pertinent here. Commissioner Gardner concurred stating that he questioned it too.

Mr. Vogel stated that Commissioner Huber is correct in her assumption and he stated that is what he originally assumed also, that it is the separation between his building and the adjacent property owner's building and that is currently 75-80 ft., thus, he thought he would get some points for that, but Attorney Oster stated that it did not pertain to any units off his property. The ordinance has to mean something so it has to mean that it is the units within his own property. Rather than one huge building there, he has three (3) separate units that gives him the separation. Commissioner Huber commented that she believes that it means in reference to that property line splitting those two properties, or in other words, the set back from the property that we are talking about buffering. Mr. Vogel stated that was his understanding as well.

Commissioner Mudder asked for clarification regarding the south unit is the one in question, the Building #1, the buffer zone between that building and the neighbors to the south, correct? One year ago, there was the buffer that got the exemption by this Committee. It then bypassed this Committee and went to the City Commission wherein it got approval from them because it was worked out with the then City Planner Stromme. What was actually worked out at that time? What was the distance between those?

How many points were there at that time? Mr. Vogel replied that he had 30 (thirty) feet away; he had four (4) rows of trees. Currently he has 20 feet, two (2) rows of trees. Commissioner Mudder commented that back when he got approved by MARC and the City Commission, he had 30 feet and three (3) rows of trees and now he has 20 feet and two (2) rows of trees? Mr. Vogel replied, "No", when he got approved by MARC, he also had two (2) rows of trees and one (1) fence. That is what was approved by the City Commission and he did that to comply with former City Planner Stromme's request that he would have six (6) points on that south property line but there is nothing in the ordinance that states that between the property line and his unit or the property line in the adjacent neighboring property. It says that buffer points must be satisfied through a combination of the following. It is not clear, but he followed the legal opinion of Attorney Oster and that stated that he should get some points for separation of the buildings.

Building One has not commenced yet nor has the south river unit been started because building permits are not in place.

Commissioner Gardner requested the map be reviewed again as to the buffer points wherein pointing out there were four (4) rows of trees that was previously approved by the City Commission. That would equal four (4) points, the fence would make it five (5) points, and then the distance of 30 ft. would be point six (6)? Mr. Vogel confirmed that is correct, and that was all approved by the City Commission in 2024. The plan since changed wherein there are two rows, twenty (20) feet. Mr. Vogel stated he is following what the ordinance states. Now, the plan was changed to have two rows and a fence, that total three (3) points. This has been going on for 18 months and he is here to get approval to finish this up.

Commissioner Huber stated that she believes that the Special Use permit is what should be followed and that would have stood even if there had been a change in the ordinance because the Special Use permit would have proceeded any change in ordinance which has not occurred yet, hence she said she is not fully understanding the thought to change it. Mr. Vogel stated they came back because they have not submitted for a permit for Building #1 or for the south unit on the river side which is considered unit #7.

Pursuant to the city request, he came back for an amendment to the Special Use permit. Commissioner Renner commented that the map currently being discussed was approved by the City Commission, what

was the impetus to changing it to two (2) rows? Were you trying to make the buildings bigger? Based on what has been presented, Mr. Vogel has met the six (6) points. Mr. Vogel explained that when he first came to Planning and Zoning, he was 58 feet deep and then he cut that down to 40 feet in order to address the concerns of the previous City Planner, although he (Vogel) did not agree with it. He has a legal opinion from an attorney that shows that he was in compliance. He said he bypassed and did this so he could continue with the project without delaying approval until the spring of 2025. He went forward with this plan after discussing with Planner Stromme. It was agreed that there would be no rebuttal and the city would allow him to go through with Buildings No. 2 and No. 3 and he would come back for Building No. 1 and Unit No. 7, this year (2025). When this was submitted, that was his intention all along to come back. So, the answer to less rows, was to build bigger shop condos and to add the river unit. He said he was asked to accept this because the ordinance was going to be re-written. So that when he came back he would have an opportunity to re-present this.

Commissioner Huber stated she understands that differently since Mr. Vogel entered into a Special Use agreement and that is what brought about an agreement on the property to the south and that would deviate from the spirit of that compromise. Mr. Vogel stated that he compromised with the city because the city thought there should be six (6) units on the south property line, a buffer. He then asked for a legal opinion from the city attorney and the city attorney said that Mr. Vogel should be able to have various ways of satisfying that buffer other than just all six (6) points on that south boundary. Commissioner Gardner stated that Mr. Vogel said that the new ordinance was going to make this better. He inquired of Mr. Vogel what particular points of the new ordinance would have alleviated this?

Building Official Singer explained that the intention was to have a revised (new) zoning Ordinance, however, that is still work in progress. He indicated he will have to look up the specifics, however, he said there is protocol for commercial landscaping. The specifics and how they correlate specifically to the Gateway District may be different. He reported that the revised (new) ordinances are not in place yet.

Commissioner Renner commented that he was not on the committee during the time of the previous discussions. He said he does not understand what was being proposed to be changed from the previous ordinance to the newly revised version that is being discussed now. If Mr. Vogel was of the understanding there was going to be a zone change, is the Planning and Zoning Commission at a point now where it needs to clarify what the zone change status is at this time. If there is going to be something that is coming up short term that it is going to be changed, would it be prudent on the part of the Planning and Zoning Commission to wait until the actual revised (new) ordinance is in place rather than attempt to make a variance on something that was already approved? In summary, would everyone be better off if the Ordinance would be put into place first? Mr. Vogel replied that if previous City Planner Stromme not resigned when he did, the ordinance probably would have been voted on whether approved or disapproved by the Planning and Zoning Commission. Chair Robinson commented that the schedule for addressing the revised (new) ordinances would have been in the spring/summer of 2025.

Commissioner Gardner stated he does not have concerns approving a variance if the spirit of filling the ordinance instead of waiting for the ordinances to pass in the next 6-9 months, if it is clear that the ordinances would satisfy the request currently being discussed.

Commissioner McLean inquired of Mr. Vogel if this item is denied today, would he (Vogel) revert back to his old plan to build? Mr. Vogel replied that he would be interested in a compromise in order to

resolve this issue explaining whether that means he can move forward with Building Unit #7 along the river and he would leave the 30 ft. buffer on Building #1, he is not opposed to that scenario. He believes there should be some common ground. He wants to follow what the current ordinance provides.

Commissioner Mudder referred to the legal opinion provided by Mr. Vogel and inquired if Mr. Vogel is interpreting the 3 points are two (2) rows of trees and one (1) fence? Mr. Vogel stated that is correct.

That is what he is interpreting as outlined by the city attorney. Commissioner inquired if Mr. Vogel would want to go 25 ft. instead of the 20 ft. to grab another point? Mr. Vogel replied that would be acceptable.

Chair Robinson stated there is a Special Use Permit with details, and the reason the attorney sent the letter is because what is there, it does not follow the Special User Permit. He said it is unclear as to what comes first – the Special Use Permit or the ordinance. Mr. Vogel stated that when his request passed Planning and Zoning Commission (previously), he was not able to automatically go to the City Commission because it was stated that he did not meet the criteria for the ordinance. Thus, the ordinance must precede the Special Use Permit.

Ms. Laqua commented that typically the Special Use Permit is not a variance to the Code so a variance to the Code would change the code or allowing someone to do something that is specifically not allowed by code. A Special Use Permit simply allows for something that *may* work in a zoning district and *may* be compatible with surrounding uses as long as certain requirements are met. In this case, it's not saying they would not have to meet the ordinance, rather it is just saying that they do have to meet the ordinance as well as other requirements in order for these shop condos to be compatible with the rest of the residential uses next door.

In summary, it is not an “either-or”, it is “both.”

Commissioner Mudder inquired that if this matter were to be tabled to gather additional information, would a month's period of time be acceptable? Mr. Vogel replied that the problem would be weather conditions. Concrete and excavation companies are already on a tight schedule. After this Board's decision, the matter will have to go to the City Commission for review. These buildings are referred to as Commercial Flex Space buildings rather than shop condos. Ms. Laqua clarified that they are listed as multi-use shop condos in the Special Use Permit.

Commissioner Huber noted that it is important to acknowledge that this was a Special Use Permit for shop condos to be adjacent to this residential property and there previously has been conflict with these different types of uses, not only on this project, but other projects as well. This was the agreed upon conditions to put those two uses adjacent to one another. For that part, for all the parties that entered into an agreement in good faith and it was believed to be a good agreement at the time and it should stand.

Ramona Furlong, 2700 Marina Road Southeast, came forward to speak. She commented that this matter had been discussed at length previously. She stated she believes the ordinance that is currently in place is what should be followed. Both this Committee and the City Commission have previously reviewed this request and there is an Agreement in place that was agreed to. She would object to anything that decreases any of the space between her property and her neighbors. She does not want the distance shortened any more from where it stands currently. She stated she does not agree with the buffer points as stated by the city attorney, commenting that it is her opinion they do not make sense. In summary, she stated there is an Agreement in place between the parties and it should stand as is and not changed. She stated that the Special Use Permit was passed with a list of conditions that she has heard are not going to

be met. She inquired how those conditions will be enforced? (i.e. no overnight stays will be permitted; comments have been made that there will be residents staying in the shop condos during the weekend; and there is not to be overnight parking allowed).

Tim Furlong, 2700 Marina Road Southeast, came forward to speak. He commented that when they purchased their property in 2011, they were away of the commercial zone and there was also an overlay that would provide some separation from anything that would be built there. He stated they did their due diligence. He voiced concern that if that gets changed now, it would be considered a “takings issue” to them because they bought their property with that provision in place wherein, they assumed that would stay in place between the residential and commercial properties. He stated they attended meetings last year and also discussed with previous City Planner Stromme and he stated the buffer zone would not get changed and that was not even in the contention. That changing the ordinance is a new development to them.

Commissioner Renner commented he is not understanding what would be the correct way to handle this matter. In his opinion there are two options for this Board to consider. (1) Continue with the way it was originally drawn with four (4) rows of tree with 30 ft. buffer zone and the fence and continue on with what was already approved by the City Commission; (2) If the applicant is determined to reduce that down to two (2) rows of trees and gaining that extra 10 ft., take a chance and gamble and push to change the ordinance to allow that. Mr. Vogel stated that he agrees with Ramona Furlong that there is an ordinance on the record that is current and that should be followed. That ordinance says that he should be allowed one (1) point for every 25 ft. separation between units. Commissioner Huber commented that we need to get the exact ordinance in front of everyone. To answer Commissioner Renner, an ordinance referenced here would have been part of the overall zoning re-write, we have not seen any particulars of that yet at the Planning and Zoning Commission, thus we would not be able to speak to whether the buffering between residential and commercial properties was proposed to be changed. Her preference is to wait until the overall code re-write is presented to this Committee for consideration. Commissioner Mudder commented that this Committee cannot make decisions based on what may or may not happen in the future. He voiced concern that the city attorney who provided a legal opinion on this, was not present to explain her position on the buffer zone. Ms. Laqua stated Building Official Singer pulled up the ordinance: “Buffer points must be set aside for a combination of the following: One (1) point for each 25 ft. of separation between buildings. One (1) point for a single row of conifers 6 ft. in height, 15 ft. on center, for example, two (2) points for double R, three (3) points for a triple row, one (1) point for a solid fence or wall at least 6 ft. in height provided the landscaping is installed between said fence or wall, in the adjacent property lines, one (1) point for a berm at least 3 ft. in height, one-half (1/2) point for over-story trees 30 ft. on center, one-half (1/2) point for a hedge or shrub at least 4 ft. in height and 75% opaque. She agrees that the interpretation while Attorney Oster’s letter notes those three (3) points may be satisfied that the separation between buildings is probably not on the property, rather it is probably between the buffering between the two properties that you are buffering between. She stated that these are the items in the code and this would be her interpretation as a professional planner. She commented that in the ordinance, above this written material, it addresses there are zero setbacks. Commissioner Huber stated that shop condos do require a Special Use permit and that’s why this discussion happened in August 2024 and that’s why that Special Use Agreement was reached. On that note, in order to move this along, she recommended there be a motion to deny this application.

Chair Robinson provided a second and final invitation to come forward.

Chair Robinson inquired if there were any comments or questions.

### **Close Public Hearing**

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

### **Commission Action**

*Commissioner Huber moved to deny the Application for a Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition. Commissioner Hammond seconded the motion.*

Commissioner Mudder stated he does not believe there is enough information to determine this matter based on Ms. Laqua, Interim City Planner, stating additional information is needed, His preference is to table this matter, and request the city attorney to weigh in what would allow Ms. Laqua to finish her research and then bring this matter back in October.

Commissioner Gardner concurred with the comments made by Commissioner Mudder and stated he is also not clear about how the distance between the properties is perceived. Commissioner McLean suggested if this matter is tabled, that a list of questions be drawn up for Ms. Laqua to research. He stated that it may be appropriate to deny this request and have it re-drafted. Commissioner Renner inquired that if this Commission denies the request now, would there be anything preventing the applicant from coming back later? Chair Robinson stated “no” however there may be additional fees incurred in the amount of \$450.00. City Administrator Neubauer stated that the Agreement that was done one year ago was joining the developer and the property owner to the south together and in essence, what is before this Commission today, is what they agreed upon. Commissioner Renner commented that if this is denied tonight, there would be nothing stopping the developer from moving forward with what was agreed to originally.

*Chair Robinson called for a roll call vote: Huber: Yes, Mudder: Yes, Horn: No; Intveld: Yes, McLean: No; Hammond: Yes, Gardner: No, Renner: Yes, Chair Robinson: Yes. The motion passed by a vote of “6” Yes to “3” No.*

### **D. OTHER BUSINESS *Planning and Zoning Commission Board Open Positions***

Building Official Singer reported there will be two positions coming up for renewal or new appointments. To apply, go to the city website:

- Committee Board Application
- Board Commission and Committee Application

- Planning and Zoning Commission and enter name, phone number, email, resident status, etc. Complete the application, select apply and then submit.

The positions that are up are held by Chair Robinson and Commissioner Gardner. This serves as a reminder for anyone interested to apply or renew by December 31, 2025. If interested in a renewal, members are required to re-apply to be considered for the position. If no re-application is received, it will be assumed that one is not interested in serving another term.

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

The meeting adjourned at 6:50 p.m.