City of Minot

Regular Planning Commission Meeting
Tuesday, June 4, 2024, at 5:30 PM
City Council Chambers, City Hall (10 3rd Ave SW)
Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. INTRODUCTIONS AND DECORUM
   - 3.1. INTRODUCTIONS AND DECORUM HANDOUT
4. PLANNING COMMISSION
   - 4.1. APPROVAL OF THE MAY 2024 REGULAR MEETING MINUTES
5. PUBLIC HEARING
   - 5.1. CASE #2024-04-03 - OUTLOT 40 SECTION 27, TOWNSHIP 155 NORTH, RANGE 83 WEST - CUP

     Public hearing request by Mark Medalen representing Vision 2020, LLP., owner for a request of a conditional use permit for a Pet Boarding Facility (6+) to be located on a "C2" General Commercial District lot. The legal description for the property is Outlot 40 Section 27, Township 155 north, Range 83 west, Ward County, North Dakota.
     The address for the property is 1821 Burdick EXPY W.
   - 5.2. CASE #2024-03-01 - POPEYES - VARIANCE

     Motion made to table this item until June 4th, 2024 at 5:30pm in the Council Chambers of City Hall.
6. ACTION ITEMS
7. MISCELLANEOUS AND DISCUSSION ITEMS
8. ADJOURNMENT

INTRO

The Planning Commission evaluates land use applications for compliance with the standards and procedural requirements outlined within the Zoning Supplement to the City of Minot (Zoning Code) and North Dakota Century Code. Further, the Planning Commission is tasked to ensure development within the City of Minot aligns with the City of Minot 2012 Comprehensive Plan (Comprehensive Plan).[1]

Planning Department staff are assigned to support the Planning Commission by reviewing applications for compliance with the Zoning Code and alignment with the Comprehensive Plan. Staff summarizes this information to the Planning Commission in the form of written staff reports, which include a recommendation. Oral presentations summarizing a staff report and any additional information obtained since the date said staff report was written is provided as determined necessary by the Planning Commission.

Planning Commission is not required to follow City staff recommendation. However, a deviation from staff's recommendation may require clarification to the findings of fact along with clearly stated reasoning for any alternative recommendation.

Finally, staff is not able to anticipate all information entered into the record via Planning Commissioner discussion or provided by the public during the open public comment period. Staff is available to answer any questions which may arise through discussion.

The Planning Commission renders a decision for variances, interim use permits, and conditional use permits that may be appealed to City Council. The Planning Commission provides recommendations to City Council for all other land use applications.

DECORUM

Persons attending public hearings are expected to conduct themselves with decorum to assure fairness and equity in the proceedings. Participants must:

- Step to the podium/microphone each time you wish to be recognized by the Planning Commission to offer a comment, or to ask or answer a question, and state your name for the record. To ensure minutes of the meeting accurately reflect the individual for which statements are made a sign-in sheet is provided at the podium for those wishing to speak.
- Address all testimony, comments and questions to the Chair of the Commission and not the other participants, the applicant, or the staff. The Chair of the Commission will determine the appropriateness of all questions and when and where to direct them.
- Allow others in attendance an opportunity to present their testimony. Do not interrupt the proceedings with applause, heckling, outbursts or other disruptive behavior.
- Address the issues and application that are before the Commission. These proceedings are not the forum to discuss the appropriateness of particular land use policies, regulations, or alternatives.
- Please silence your phones or set them to vibrate at this time.

[1] Per N.D.C.C 40-48-09, the basic purpose of the plan:

> *…The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs, which, in accordance with present and future needs, best will promote the amenities of life, health, safety, morals, order, convenience, prosperity, and general welfare as well as efficiency and economy in the process of development, including adequate provision for light and air, distribution of population, good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, the improvement and control of architecture, and the general embellishment of the area under its jurisdiction.*

This document serves two purposes: 1) To provide a summary of the Planning Commission meeting and associated recommendations to City Council; and 2) To act as the Planning Commission minutes of the meeting. The minutes of the Planning Commission meeting are generally adopted at the following Planning Commission with or without changes.

Regular Meeting: Planning Commission.
Location: City Hall, Council Chambers, 10 3rd Avenue SW., City of Minot, N.D.
Meeting Called to Order: Tuesday, May 7, 2024 @ 5:30 pm.
Presiding Official: Chairman Offerdahl.
Members in Attendance: Commissioners Offerdahl, Baumann, Iverson, Kibler, Mennem, Pontenila, Longtin, Johnson
Members Absent: Commissioners Gates, Dohms
City Staff Present: Brian Billingsley (Community Development Director), Doug Diedrichsen (Principal Planner), Nick Schmitz (Assistant City Attorney), Daniel Falconer (Associate Planner), Lance Meyer (City Engineer), Luke Tillema (Building Official), Jason Sorenson (Public Works Director Asst.), Hannah Hornberger (Planning Assistant)
Others Present: Richard Pederson, Jesse Turner, James Kassube, Dan Perkins, Sharon Jewell, Izkra Carrasco, Jolene Stenvold, Arlene Castleman, Jim Paszek, Jeri Laugeme

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The following are the minutes of the Planning Commission meeting. The minutes are in DRAFT form until formally adopted by the Planning Commission:

Meeting Called to Order by Chairman Offerdahl at 5:30 pm

Item #1: Roll Call

Item #2: Pledge of Allegiance

Item #3: Intro & Decorum

Item #4: Approval of Minutes
Motion by Commissioner Baumann to approve the April 2, 2024 Planning Commission Meeting Minutes. Second by Commissioner Kibler and carried by the following roll call vote: ayes: all, nays: none. **Motion carries.**

Item #5: 2024-02-05: CUP – Duchsherer Addition Lot 1
Public hearing request by Floyd Duchsherer representing JPW Ventures Inc., owner for a request of a conditional use permit for a "C2" General Commercial District lot

The address for the property is 1830 16th Street SW. Chairman Offerdahl asked for staff report to which Mr. Diedrichsen provided a verbal summary of the written staff report. Mr. Diedrichsen provided an aerial view of the property as well as the current zoning of the property, "C2" General Commercial, Legal non-

conforming. Future Land Use would have to conform to existing underlying zoning. The subject property is designated as General Commercial in our Future Land Use plan. The property is being requested to add Galvanized Chain link fence surrounding the property. Mr. Diedrichsen then showed site photos of the current property, which is the existing self-storage units. Mr. Diedrichsen informs that this is allowed under the Conditional Use Permit.

Commissioner Kibler questions why he needs a Conditional Use Permit if the galvanized chain link fence is allowed as material. Mr. Diedrichsen informs him that is not an accepted material under "C2" and that a Conditional Use Permit is needed to allow for traditional chain link fencing.

PUBLIC HEARING:
Chairman Offerdahl opened the public hearing to the public for testimony.
No one appeared to testify.
Chairman Offerdahl closed the public hearing.

FINDINGS OF FACT:
The Minot Planning Commission should accept the following findings of facts:

1) The applicant has submitted a complete application.
2) The property is zoned "C2" General Commercial District
3) The City of Minot 2040 Comprehensive Plan Future Land Use Map designates this area as General Commercial.
4) The proposal satisfies the evaluative criteria per Section 9.1-4. F. 1. thru 8. as outlined in the Staff Analysis section of staff's written report.
5) The Minot Planning Commission has the authority to hear this case and decide whether it should be approved or denied, with or without conditions. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

STAFF RECOMMENDATION:
Staff recommends the Planning Commission adopt the staff findings of fact and approve the conditional use permit for a commercial self-storage with the condition that galvanized chain link fencing be permitted as a fencing material.

FINAL DECISION:
Motion made by Commissioner Kibler based on staff's finding of fact and recommendation. Second by Commissioner Iverson. The motion was carried by the following vote: ayes: 8, nays: 0. **Motion carries.**

Item #6: 2024-03-03: CUP - Pedersen
Public hearing request by Richard Pederson & Anita Lantto, owners for a request of a conditional use permit for a "R1" Single-Family Residential District lot. The legal description for the property is Outlot 18 lying in the southeast 1/4 of the northwest 1/4 Section 24, Township 155 north, Range 83 west, County of Ward, North Dakota.

The address for the property is 118 5th Street SE. Chairman Offerdahl asked for staff report to which Mr. Diedrichsen provided a verbal summary of the written staff report. Mr. Diedrichsen provided an aerial view of the property as well as the current zoning of the property, "R1" Single-Family Residential District, without a principal residence. The subject property is designated as Suburban Residential in our Future Land Use plan. An accessory building was moved onto the property without a moving permit and without securing a conditional use permit providing land use entitlements. Applicant is seeking to establish entitlement so that the moving permit can be processed by the Inspections Division. Mr. Diedrichsen then showed site photos of the current property, which shows the access road, the accessory building, and the remaining of the property. Mr. Diedrichsen stated staff recommends Planning Commission adopts staff findings facts and recommends approval.

Commissioner Baumann questioned if this building was already there and if we need to clean up the FLU designation map. Mr. Diedrichsen informed him that the applicant came in after the building was already moved and that yes the FLU amendment needs to go through clean up. Commissioner Kibler is questioning the closeness to the river and if this property falls under the FEMA mitigation zone. Mr. Diedrichsen informs him that the property is within the 100 year flood plan and the applicant will need to go through the city engineer to remedy with the flood plan.

PUBLIC HEARING:
Chairman Offerdahl opened the public hearing to the public for testimony.
Richard Pederson explains that the building was 100 year old and he didn't want to see it tore down, and it was moved 150-200 feet to his property. The building will only be used for storage.
Jesse Turner, neighbor, in favor just wants to state that it is 6th St not 5th St.
Chairman Offerdahl closed the public hearing.

FINDING OF FACT:
The Minot Planning Commission should accept the following findings of facts:

1) The applicant has submitted a complete application.
2) The property is zoned "R1" Single-Family Residential District
3) The City of Minot 2040 Comprehensive Plan Future Land Use Map does not designate this area; however, it is located directly adjacent to, and is part of a neighborhood designated Suburban Residential.
4) The proposal satisfies the evaluative criteria per Section 9.1-4. F. 1 thru 8. as outlined in the Staff Analysis section of staff's written report.
5) The Minot Planning Commission has the authority to hear this case and decide whether it should be approved or denied, with or without conditions. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

STAFF RECOMMENDATION:
Staff recommends the Planning Commission adopt the staff findings of fact and approve the conditional

use permit for accessory structure on a lot with no primary dwelling.

FINAL DECISION:
Motion made by Commissioner Baumann based on staff's finding of fact and recommendation, adding condition that this approval has no impact on the existing tree canopy. Second by Commissioner Kibler. The motion was carried by the following vote: ayes: 8, nays: 0. **Motion carries.**

Item #7: 2024-03-04: Zone Change – Hillcrest Dr
Public hearing request by Marshall Morgan, owner for a request of zone change for a "R1" Single-Family Residential District lot. The legal description for the property is Lots 7 & 8 of Nordstrom & Hanson Subdivision, Section 13, Township 155 north, Range 83 west, County of Ward, North Dakota.

The address for the property is 301 Hillcrest Drive. Chairman Offerdahl asked for staff report to which Mr. Diedrichsen provided a verbal summary of the written staff report. Mr. Diedrichsen provided an aerial view of the property as well as the current zoning of the property, "R1" Single Family Residential District. Legal non-conforming. Future Land Use would have to conform to existing underlying zoning. The subject property is designated as Suburban Residential: in the Future Land Use plan. The property is being requested to change to "RM" Medium Density Residential District, which would complement the Suburban Residential that is given in the Future Land Use map. Mr. Diedrichsen then showed site photos of the current property, which shows access from property on 3rd St and the building frontage on Hillcrest as well as the building itself. Mr. Diedrichsen stated staff recommends Planning Commission adopts staff finding facts and recommends approval.

Commissioner Baumann questions the concerns with spot zone changing. Nick Schmitz, the Assistant City Attorney explains it's okay to move forward because it will be bringing it into conformance and consistent with the FLU. Mr. Diedrichsen also states that best case scenario is that the surrounding houses also come in and request zone changes for "RM". Commissioner Kibler asks if all homeowners in the area received notifications of the request for zone change. Mr. Diedrichsen informed him that everyone within 600ft receives notification as well as a published public hearing in the paper. Commissioner Bauman questions traffic concerns and parking. Mr. Diedrichsen states that they are actually moving from a 4-plex to a 3-plex so parking and traffic should actually decrease.

PUBLIC HEARING:
Chairman Offerdahl opened the public hearing to the public for testimony.
No one appeared to testify.
Chairman Offerdahl closed the public hearing.

FINDING OF FACT:
The Minot Planning Commission should accept the following findings of facts:
1) The applicants have submitted a complete application.
2) The present zoning is "R1" Single-Family Residential District.
3) The City of Minot 2040 Comprehensive Plan Future Land Use Map designates this area as Suburban Residential.

4) The proposed zoning map amendment satisfies the evaluative criteria of Section 9.1-7. H. 1. thru 4. of the Land Development Ordinance as outlined in the Staff Analysis section of staff's written report.
5) The Minot Planning Commission has the authority to hear this case and provide a recommendation to City Council whether the zoning map amendment be approved, with or without conditions, or denied. The public notice requirements were met, the hearing was legally noticed and posted, and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

STAFF RECOMMENDATION:
Staff recommends the Planning Commission adopt staff's findings of fact and recommend approval to City Council for a zoning map amendment from "R1" Single-Family Residential District to "RM" Medium Residential District with no conditions.

FINAL DECISION:
Motion made by Commissioner Iverson based on staff's finding of fact and recommendation. Second by Commissioner Longtin. The motion was carried by the following vote: ayes: 8, nays: 0. **Motion carries.**

Item #8: 2024-03-01: Variance – Popeye's
Public hearing request by Harold Rose representing MYLA Property, LLC., owner for a variance for a "C2" General Commercial District lot. The legal description for the property is Outlot 9 of the northeast 1/4 less highway right-of-way Section 35, Township 155 north, Range 83 west, County of Ward, North Dakota.

The address for the property is 300 28th Ave SW. Chairman Offerdahl asked for staff report to which Mr. Diedrichsen provided a verbal summary of the written staff report. Mr. Diedrichsen provided an aerial view of the property as well as the current zoning of the property, "C2" General Commercial. Future Land Use would have to conform to existing underlying zoning. The subject property is designated as General Commercial in the Future Land Use plan. Variance application is being brought to the Planning Commission after the site was constructed. The site as constructed deviates from the approved original site plan significantly. At the time of final inspection it was noted by the building inspector that the building and site as constructed had deviated from the approved plan considerably, and the issue was brought to Mr. Diedrichsen and Mr. Billingsley immediately. A meeting with the applicant was scheduled March 15th to discuss the options moving forward. Requirements for a temporary certificate of occupancy were outlined at that time. The applicant was asked to do several things including: submit a new proposed site plan, proof that the City Forester was contacted about street tree planting, providing landscaping bond, a variance application completed and a letter regarding a need for a retaining wall on the north side of the property that wasn't constructed but was in the original plan to the City Engineer. Mr. Diedrichsen then showed the approved original site plan that met all design requirements. Mr. Diedrichsen then showed the proposed site plan that was submitted with the variance application. The proposed site plan doesn't meet the design requirements for buffer yards, street landscaping and supplemental landscaping. The property was paved right up to the right away line and in turn street landscaping would now be expensive to fix. The proposed street landscaping also falls short of requirements. The buffer yard is 12ft and 7in narrower than the 20ft required buffer yard. Mr. Diedrichsen then presented the site photos showing the buffer yard and the width that was measured, showing the shortage. The required 20ft buffer yard must be on the developer's site entirely, reasonably free of paved areas, sidewalk and storage, entirely

landscaped with grass and one (1) tree is required every 20 linear feet. The buffer strip is defined as a landscaped strip to visibly separate or shield or block noise, light and other nuisances. Mr. Diedrichsen showed additional site photos showing the site being built right up to the right away line. There should be a ten (10) foot strip of landscaping between the retaining wall and sidewalk, there is also a lack of supplemental foundation planting along the building frontage facing south. The last of the pictures are showing where the structural retaining wall was supposed to be built. Also, one last photo to show a rubble pile that hasn't been removed from construction and is a nuisance violation, this will need to be removed before a final occupancy permit can be issued. Mr. Diedrichsen then provided a diagram of what the general landscaping requirements are. Mr. Diedrichsen then presented the code outlying the conditions in which a variance can be granted. The unique hardships cannot be created by the landowner, not including economic or fiscal hardship and a unique hardship is limited by the LDO to one or more of the following: shape of property, topography or exceptional practical difficulties. Staff finds that none of the variance criteria are satisfied or applicable. Mr. Diedrichsen stated staff recommends the Planning Commission deny the variance or alternatively that the Planning Commission allows the applicant additional time to address its nonconforming conditions and propose an alternate solution in the form of a site plan, created by a licensed design professional, conforming to the LDO design standards and table this application until June 4, 2024 meeting at 5:30pm in the Council Chambers of City Hall.

Commissioner Kibler is wondering how this happened, lack of communication? Mr. Diedrichsen informs that to his understanding the contractor deviated from the approved site plan, it was also noted that the contractor was told the site was being constructed in the wrong spot and they needed to reach out to the city and go through the process to amend the site plan that wasn't done. The planning staff doesn't have the authority to stop a build. Commissioner Kibler is questioning after they were told they were building not according to the plan, is that when they received a temporary permit to continue to build. Mr. Diedrichsen informs that they built the site to completion and during the final inspection where a certificate of occupancy would have normally been issued, that is when all of the problems were brought to the staff's attention and they were only given a temporary certificate of occupancy. Commissioner Baumann wanted to clarify that along with the list of LDO requirements that weren't met, the neighbors are also now not granted their 20ft of buffer zone for lights and sound. He also added to clarify that every business in city limits is required to follow guidelines that weren't met in this case. Mr. Diedrichsen informs that he is correct. There is now a concern that there is now a nuisance for property owners. Mr. Diedrichsen also informs him that yes, everyone is required to follow these guidelines and are held to the same standards. Commissioner Baumann wonders if failure to uniformly enforce would fall under legal ramifications. Mr. Diedrichsen lets him know that multiple problems would come from just approving this as a one off. Commissioner Baumann would like to clarify that tabling this would give the applicant a month to come up with a new design to address and fix these problems. Mr. Diedrichsen ensures that yes that is the plan. Mr. Nick Schmitz, the Assistant City Attorney, informs the Commissioners that many legal ramifications can occur if the LDO isn't followed and it is best not to treat this as a one off. Chairman Offerdahl is wondering if there was any reason, verbal or written, why it was moved. Mr. Diedrichsen informs that as far as he knows, no communication was had as to why. Commissioner Iverson is concerned if the building itself is in an "ok" spot right now. Mr. Diedrichsen states that the building does meet setbacks and that Mr. Luke Tillema can speak further to that. Commissioner Iverson also questions if they were informed that they weren't building to the site plan while in the process. Mr. Luke Tillema explains

the building itself meets all building codes, it just wasn't built where the site plan states it would be built. He, as the building official for the city, also does not have the authority to stop a project that meets the codes. But that the applicant was aware that it was against the site plan. Commissioner Baumann questions if there is any record of communication of this. Mr. Tillema informs that he found an email referencing the retaining wall but not about the location. However, it is noted in the inspection report. Commissioner Longtin questions what the impacts to the property owner are if we deny the variance today. Mr. Diedrichsen states the applicant can stop operations to bring everything to compliance or appeal to the city council within 10 business days. Mr. Tillema states the temporary certificate of occupancy states that the building is safe, but not quite done and that it expires May 24th. The certificate of occupancy would be under vote and then held for other reasons. Commissioner Kibler is wondering who submits the site plan, being a franchise holder or the Popeye's chain itself. Mr. Tillema states a firm submitted the plan and then the application was done by the contractor. Mr. Diedrichsen states that if the variance were denied the process would move into a zoning violation. Commissioner Iverson questioned how far off the building is from the original site. Mr. Diedrichsen informed that it is approximately 12ft too far to the west and 10ft too far to the south. Commissioner Iverson also questioned even with the recommendations, the drive through would still be on the set back. Mr. Diedrichsen states that the buffer yard needs to essentially be reasonably free of a built environment and that includes any pavement.

PUBLIC HEARING:

Chairman Offerdahl opened the public hearing to the public for testimony.

Harold Rose, owner, started off apologizing and giving some background. He states that this is his first store from the ground up and that he was never told he building in the wrong spot. He says the excavating crew dug in the wrong spot initially. After the concrete was done he questioned if we need to stop and rip everything out. He was informed by the contractor that the inspectors have approved everything to this point. He states they went to his engineer about the retaining wall and was decided among the crew they didn't need a retaining wall. He states he didn't know after changes had been made that he should go back to the city with an updated plan including the changes. He would like everyone to know that they will do whatever they can to make things right for everyone involved. Mr. Rose informs that they have turned in proposed plans to the city to try and fix this. He states that they're creating employment opportunities and they will do what they can to not have to be shut down. Mr. Rose also informs that the drive through lane is already close as it is. Commissioner Baumann asks Mr. Rose if he is willing to work with a design professional to bring the site into compliance. He also asks if they will be cleaning up the construction rubble. Lastly, he asks if he's willing to work with the city engineer to make sure the parking lot is in compliance and putting in a retaining wall if necessary. Mr. Rose says yes he is willing to make this right. He says they want to fix everything and bring it all into compliance. Commissioner Kibler confirms that Mr. Rose would like the commission to table for a month to work with a designer to make things right. Mr. Rose responds yes, that if we can avoid a shutdown so people aren't out of jobs and that he has been working on plans to fix the problems already. Chairman Offerdahl reiterates the temporary occupancy permit expires May 24th, and that if we do table this until June 4th, what is the process for that? Mr. Tillema states he would like to issue a full certificate of occupancy.

James Kassube, resident, states the garbage truck is coming at 4am every day and causing a nuisance, the street itself during busy hours, people are parking on both sides of the street and it's causing dangerous

situations on the street and the ability to pull onto the street. He also states the lights aren't turning off until 2am and they're shining directly into the condos, and can also hear everyone's drive through orders while sitting on his deck. Dan Perkins, resident, states he has no issue with the C2 zoning, however parking is the issue. When residents need to pull out onto the street they practically have to pull out into traffic to see if anyone is coming. He states that maybe the extra gravel area could be made into more parking. He brought pictures to also show the trash problems. The dumpsters aren't being closed and trash is blowing into our yards as well. Mr. Perkins then showed pictures of how the lights are effecting them as well, the windows on that side are either a living room/family room or bedrooms. He is concerned that in the winter months when it is dark at 5pm that it is going to become an even bigger problem. He is also concerned that the trees alone won't be able to deter this problem and they will take a while to grow. Sharon Jewell, board of managers for condo association, states they have a tremendous amount of value in their homes. She is concerned with the value of the homes with the light pollution. Mrs. Jewell also states that the traffic has cause issues as well, not to mention the trash problems. Izkpa Carrosco, resident, states she has the same issues as well with the noise, and is wondering if something can be done to deter late night shipments in the meantime if this is tabled. Mr. Rose states they could make some calls to adjust trash pickup time as well as truck deliveries. They initially had them coming early to adjust for opening, but now that things have settled they will work on adjusting that as well. He also states that parking will start to decrease because they were overstaffing to compensate for a busy opening. Mr. Rose informs that they've already had conversations about graveling the remaining of the lot to use for employee parking as well to help. He talks about purchasing shields to block the lights into the condo property as well. He wants to reiterate that they will fix problems as they are presented to us. Chairman Offerdahl asked about the lights being on until 2am if they close at 10pm. Mr. Rose states that he will speak with his team about getting them shut off earlier and getting the domes to help alleviate that as well. Commissioner Kibler states that the domes would make a significant difference. Jolene Stenvold, resident, questions why the building was continuing to be built if it was in the wrong spot. Mr. Diedrichsen states that the building was built to building code standards so there is no authority to stop the build. Mr. Perkins asks who does have the authority to stop the building when it is found that it was being built in the wrong spot. Mr. Diedrichsen states that each step was inspected and no codes were violated, there are two different codes that are being questioned here. Inspection doesn't have the authority to stop a project because they didn't violate any building codes. It violated the LDO which is the zoning code. All of our authority to deal zoning code is reactive not proactive. Mr. Diedrichsen states he can enforce zoning code violations through that process after they have been committed. There is no proactive step to stop a zoning code violation. Commissioner Baumann questions if that would fall under the century code to be able to stop that proactively. Mr. Nick Schmitz stated that he will have to do some research on that and that certain procedures have to be followed no matter what. The process as it exists is being followed correctly. Mr. Rose informs that he thinks this is the problem, that everything was being passed, they thought that meant everything was good. Commissioner Baumann asks if his builder mentioned why it wasn't built to the plan. Mr. Rose explains the first excavation company left in the middle and a new company was brought in, and he thinks that's when it was dug in the wrong spot. Commissioner Baumann states that there was an approved set plan in place, and we as a city maybe don't have the city staff to check the conformity of every approved plan while it is happening. We are assuming that you as a professional developer are following the plan. Mr. Tillema states he has one (1) commercial building inspector for the entire city. He clarifies they don't carry survey equipment or verify site plans, they are

out there to enforce building codes. If it meets setbacks for fire codes, we pass it, if it meets building codes, it's passed. Chairman Offerdahl reiterates that they were passed on building codes and not the ordinance or the buffer zone. Mr. Billingsley asks Mr. Tillema to verify that it is documented that the inspector did inform the contractor that the issue of the building site being off. Mr. Tillema explains yes, it is documented on the footing inspection, underneath the building there are geo-piers, during the geo-piers inspection it was documented that it didn't appear to match the site plan, but since it wasn't a building code violation we passed it. Commission Iverson asks when the exact date Mr. Rose knew the building wasn't in compliance and the exact date the developer was notified there was a problem. Mr. Rose states the day he knew they weren't legit was the day before opening. He states he called for the occupancy permit and was informed it would be 3 business days. On Wednesday I remember seeing people walking around the property, then I got the notification that we weren't in compliance. Commissioner Kibler asked how we found out it was in the wrong spot and Mr. Rose responded that the city came out and measured everything after the final inspection. Mr. Diedrichsen informed that after the final inspection we were made aware of the violation and went out with a tape measurer. Mrs. Sharon Jewell asked what is going to stop this from happening again. Chairman Offerdahl and Mr. Billingsley state that in the 5-6 years they've been on the commission this situation hasn't happened, and that we would sit down with legal staff and ensure this doesn't happen again. Arlene Castleman, condo owner, states they have built multiple structures in Minot and the building inspectors in Minot were on it and she would like to applaud the city inpsectors for their work, but it seems in this project there were errors. Chairman Offerdahl stated that the building inspection process was followed to a T and this is an after the fact zoning issue. Mr. Diedrichsen informs that there is a code enforcement officer, however that is for violations that happen after the fact. Mr. Perkins wanted to state that working with Mr. Diedrichsen and his staff was great and they returned all inquiries timely. Jim Paszek, resident, the majority of the condo complex is at the meeting, that is how concerned the public is with this matter. He asks that the Planning Commission not approve this variance until every problem is fixed. Jeri Laugeme, resident, wants to state that they are just looking for a solution. Mr. Diedrichsen wants to state that the trash screen should have been completely covered by the buffer yard. He also informs that the trees would have to be coniferous, meaning evergreens in the buffer yard. He also states that the shielding of the lights is also a zoning requirement and that the applicant was made aware of that. Commissioner Kibler states that tabling this item seems like the best option, and would like to motion that we table this item until June 4th, 2024 at 5:30pm in the Council Chambers of City Hall. Commission Johnson second the motion. Commissioner Baumann states that we have high standards for what Mr. Rose is to obtain for a developing plan from a professional developer. He expects a plan for very robust line of trees, expects all of our landscaping requirements to meet the code to a "T", that the light issues are to be taken care of above and beyond what is asked, the trash issues to be addressed and for delivery times to be addressed.
Chairman Offerdahl closed the public hearing.

FINDING OF FACT:
The Minot Planning Commission should accept the following findings of facts:

1) The applicants have submitted a complete application.
2) The property is zoned "C2" General Commercial on the Official Zoning Map requiring compliance with "C2" General Commercial District design standards and has a "General Commercial" designation on the Future Land Use Map of the 2040 Comprehensive Plan.

3) The variance does not meet the applicable criteria per 9.1-3 G., as outlined in the Staff Analysis section of the Planning Commission Staff Report.
4) The Minot Planning Commission has the authority to hear this case and decide whether it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

STAFF RECOMMENDATION:
Staff recommends the Planning Commission adopt staff findings of fact and:

Deny a variance to the Section 7.1-4. C. & Section 7.1-3. A & C. related to street landscaping, site landscaping and buffer yard standards.

Alternative Recommendation

It may be possible for the applicant to address the concerns outlined in the Staff Analysis section of staff's written report and provide a reasonable strategy to mitigate the possible noise and light nuisances by removing existing built elements to make room for the required landscaping elements and buffers. This could be done by reconfiguring the site and removing some paving. The possibility of land acquisitions from adjacent property could also be explored to achieve the goal of a conforming site. To this end, staff provides the following alternative recommendation to allow the applicant additional time to address its nonconforming conditions and propose an alternate solution in the form of a site plan, created by a licensed design professional, conforming to the LDO design standards.: Table the item until Tuesday, June 4, 2024 at 5:30p.m. in the Council Chambers of City Hall.

FINAL DECISION:
Motion made by Commissioner Kibler to table this item until June 4th, 2024 at 5:30pm in the Council Chambers of City Hall. Second by Commissioner Johnson. The motion was carried by the following vote; ayes: 8; nays: 0. **Motion carries.**

Item #9: Other Business
None

Item #10: Adjournment
With no further business, Chairman Offerdahl adjourned the meeting at 7:35pm.

City of Minot

Planning Commission
Staff Report

Application Date: 04/26/2024
Staff Contact: Doug Diedrichsen, Principal Planner
Date of Staff Report: 05/16/2024
Staff Recommendation: Approval
Date of Planning Commission Meeting: 06/04/2024

Case Number: 2024-04-03

Project Name: Outlot 40 Sec 27-155-83 – CUP

Current Legal Description: Outlot 40 Section 27, Township 155 north, Range 83 west

Proposed Legal Description: No Change

Present Address: 1821 Burdick EXPY W.

Owners: Dog Dood (Lessee)

Representative: Mark Medalen

Entitlements Requested: Conditional Use Permit for a Pet Boarding Facility (6+)

Present Zone(s): "C2" General Commercial District

Present Use(s): Office Complex

Uses Allowed in Present Zone(s): See Table 2.2 for allowed and conditionally permitted uses within each district.

Present Future Land Use Map Designation: General Commercial

Proposed Zone(s): No Change

Proposed Use(s): Pet Boarding Facility (6+)

Uses Allowed in Proposed Zone(s): See Table 2.2 for allowed and conditionally permitted uses within each district.

Proposed Future Land Use Map Designation: No Change

PROJECT DESCRIPTION:

Public hearing request by Mark Medalen representing Vision 2020, LLP., owner for a request of a conditional use permit for a Pet Boarding Facility (6+) to be located on a "C2" General Commercial District lot. The legal description for the property is Outlot 40 Section 27, Township 155 north, Range 83 west, Ward County, North Dakota.

The address for the property is 1821 Burdick EXPY W. An aerial photo of the subject property can be found in **Exhibit 1**.

BACKGROUND INFORMATION:

The subject property is located on the south side of West Burdick Expressway south of the Souris Valley Golf Club. The property is operated by Dog Dood, and is utilized as pet boarding facility (up to 5), which is a permitted use under the Land Development Ordinance of the City of Minot (LDO) in a "C2" General Commercial district. The applicant seeks a required conditional use permit for Pet Boarding Facility (6+) as defined in the Land Development Ordinance in order to expand their operation.

A Letter of Intent can be found in **Exhibit 2**.

A Lease Location Map can be found in **Exhibit 3**.

A Site Plan can be found in **Exhibit 4**.

A Future Land Use and Zoning Map can be found in **Exhibit 5**.

Site Photos can be found in **Exhibit 6**.

A copy of the Lease Agreement can be found in **Exhibit 7.**

STAFF ANALYSIS:

Conditional Use Permit Analysis:

Section 9.1-4 of the Minot Land Development Ordinance (Zoning Ordinance) recognizes that certain land uses, when under special conditions and review can be compatible with uses that are permitted by right in a zoning district. The review of the conditional use permit (CUP) application and any special conditions imposed by either the Zoning Ordinance or City Staff should occur via a thorough public process as prescribed by Section 9.2-1 including a public hearing, direct noticing to neighboring property owners, and general public noticing within the Minot Daily News. Per Section 9.1-4 I., an amendment to a CUP follows the same process as a new application. The applicant has submitted the necessary application documents required per Section 9.1-4 C. and noticing has been conducted as required per Section 9.2-1.

Section 9.1-4 F. states that the Planning Commission shall find that the application meets all of the following, as applicable:

1. The request will be harmonious with the general and applicable specific objectives of the City's Comprehensive Plan and this Ordinance.
2. The proposed conditional use at the specified location will not be detrimental to or endanger the health, safety, welfare, comfort, or convenience of the public.

3. The proposed conditional use will not cause substantial injury to the value of other properties within the area in which it is located.
4. The location, size, design, and operating intensity of the proposed conditional use will not prevent the development and use of neighboring property in accordance with the applicable zoning district. In making this determination, the Planning Commission will consider the siting, nature, and height of existing and proposed buildings and structures, and the extent and effectiveness of proposed buffering or landscaping.
5. Adequate public services and facilities exist or will be provided by the developer at the time of development, including adequate utilities, water and sewer systems, drainage structures, and other such facilities and services which are necessary to serve the development.
6. The request will not create excessive additional requirements for public facilities and services at public cost and will not be detrimental to the economic welfare of the community.
7. Adequate access roads or entrance and exit drives exist or will be provided by the developer to prevent traffic safety hazards and minimize traffic congestion on public streets.
8. The request will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

Staff finds the proposed use to be harmonious with the comprehensive plan future land use map designation of General Commercial and the LDO. Section 4.1-6. O. outlines the specific requirements for a pet boarding facility. Section 4.1-6. O. 1. a. requires that a floor and Site plan be approved by the Planning staff has been met. Section 4.1-6. O. 1. b. outlines the placement of exterior dog runs has been met per the site plan. Section 4.1-6. O. 1. c. requires that commercial sites be connected to sanitary sewer is met. Section 4.1-6. O. 1. d-e. regarding placement of the animal quarters has been met via the floor plan. Section 4.1-6. O. 1. f-g. regarding fencing requirements have been met via the site plan, therefore Section 9.1-4 F. 1. is satisfied.

Related to Section 9.1-4. F. 2 thru 4 generally relate to the overall impact of a proposal on property within the vicinity. The property is currently being utilized as a pet boarding facility being a permitted use for up to five (5) pets without conditional permitting. The adjacent uses are commercial and industrial and there is ample space on the property for construction of required infrastructure for a Pet Boarding Facility (6+), therefore staff finds that Section 9.1-4. F. 2 thru 4 is satisfied.

Staff finds Section 9.1-4. F. 5. related to the provision of appropriate public services such as utilities and drainage systems is satisfied, as no new public utilities are being sought and existing public utilities are adequate to support the proposed use.

Staff finds that Sections 9.1-4. F. 6. and 7. related to maintaining community economic welfare and providing adequate road access, respectively, are satisfied. There is currently adequate access onto Burdick Expy. W, and improvements, if any were required, would be at the expense of the developer to satisfy these two evaluative criteria going forward.

Finally, Section 9.1-4. F. 8. is satisfied, as Staff does not have any evidence that the request will result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

Comments:

a) There have been public comments at the time of writing this staff report. We would like to submit this letter for the public record.
b) The application was distributed to city departments and external public agencies within the City for review and no comments were received.

FINDINGS OF FACT:

The Minot Planning Commission should accept the following findings of facts:

1) The applicant has submitted a complete application.

2) The property is zoned "C2" General Commercial District

3) The City of Minot 2040 Comprehensive Plan Future Land Use Map designates this area as General Commercial.

4) The proposal satisfies the evaluative criteria per Section 9.1-4. F. 1. thru 8. as outlined in the Staff Analysis section of staff's written report.

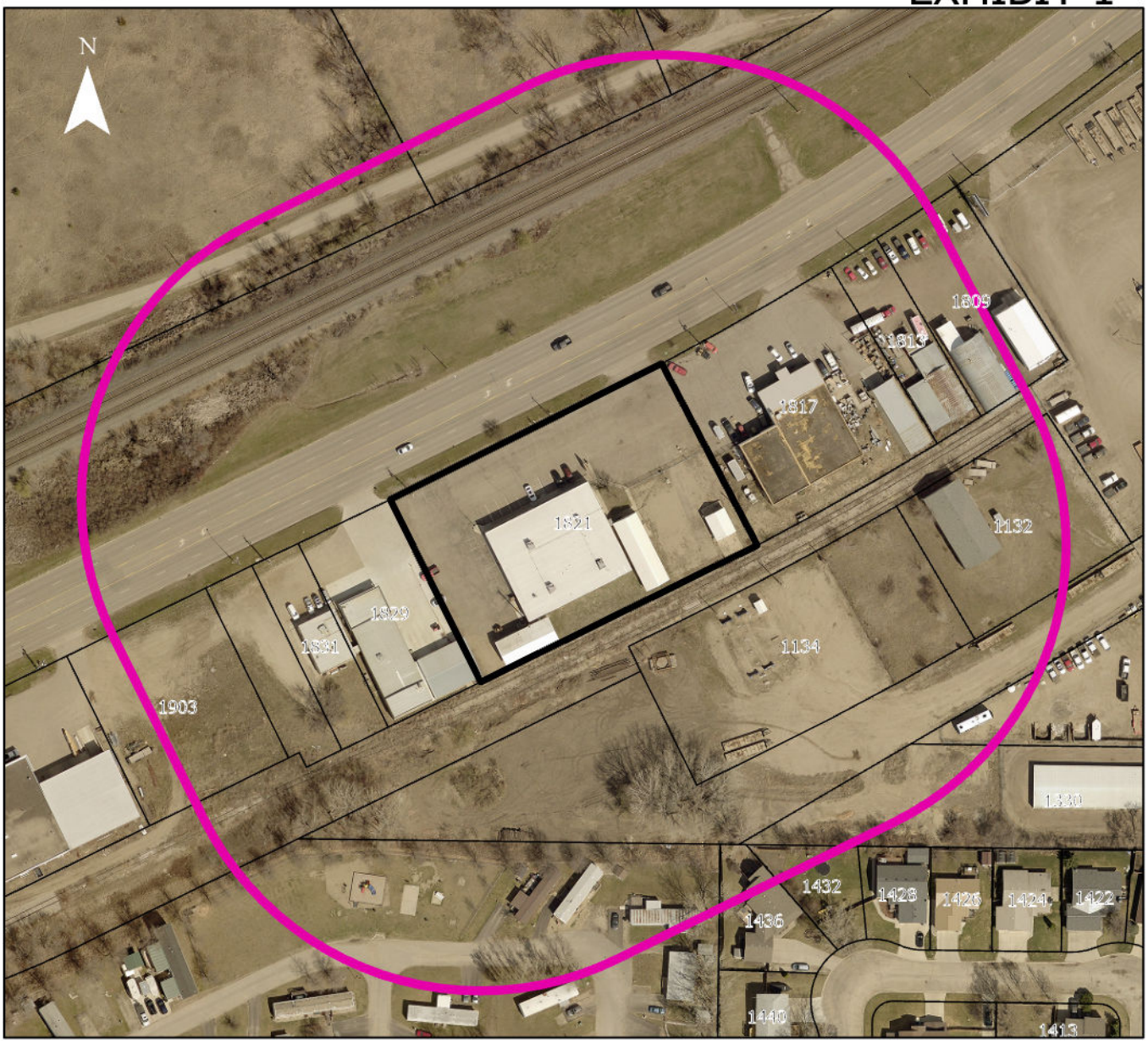
5) The Minot Planning Commission has the authority to hear this case and decide whether it should be approved or denied, with or without conditions. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

RECOMMENDATION:

Staff recommends the Planning Commission adopt the staff findings of fact and approve the conditional use permit for a Pet Boarding Facility (6+) limited to 1.5 dogs per suite.

City of Minot

EXHIBIT 1



0 110 220 440 Feet

Case # 2024-04-03

Case # 2024-04-03 Notification Area

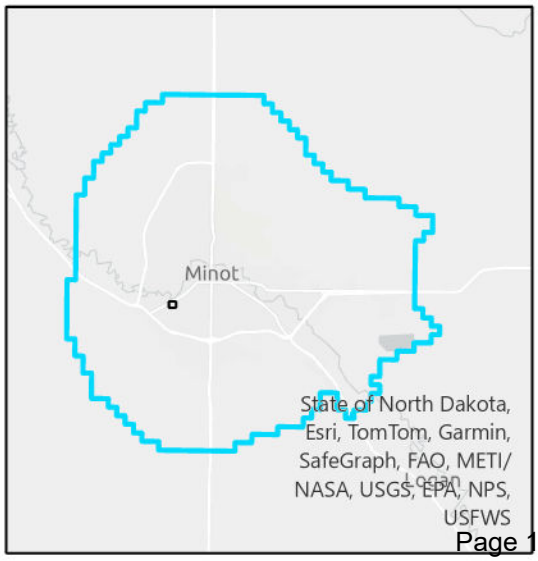


Exhibit 2

To whom this may concern,

Dog Dood Daycare has been fully operational (as of today June 4, 2024) for 1 year. Our facility is located with numerous businesses that operate indoor & outdoor year-round, including the Food Supply Store and Eyes on Burdick. Dog Dood has made it a priority & has a policy in place to be respectful of these operating businesses in regards to noise. We are proud to not ever receive a noise complaint from any of our neighboring businesses & rather- receive their support!

During this past year, Dog Dood has had one lingering question asked by a majority of customers- “Do you board dogs too?” Quality dog boarding is hard to find for our community. We have been in contact with the City of Minot for nearly a year to try to accommodate this need. We are thrilled that the Minot City Council revised the ordinance on the meeting that took place on May 6, 2024. At this meeting the board voted 7-0 for boarding within the City of Minot- a great addition that the City of Minot desperately needed.

Since the meeting that took place on May 6, my wife & I have spent countless hours building quality 4ftx5ft dog suites (see Picture 1, attached) to allow dogs the ability to move throughout their stay & a more comfortable feel as opposed to concrete floors and metal surroundings. These suites each have a theme (for example: Doggy Dorm, Pup Penthouse, and Canine Cabin) with cameras for both us and the owners to watch the dogs with. We feel that Dog Dood Boarding Suites is bringing a new level of dog boarding for our community- that is motivated by what we, as dog parents ourselves, would want for our dogs.

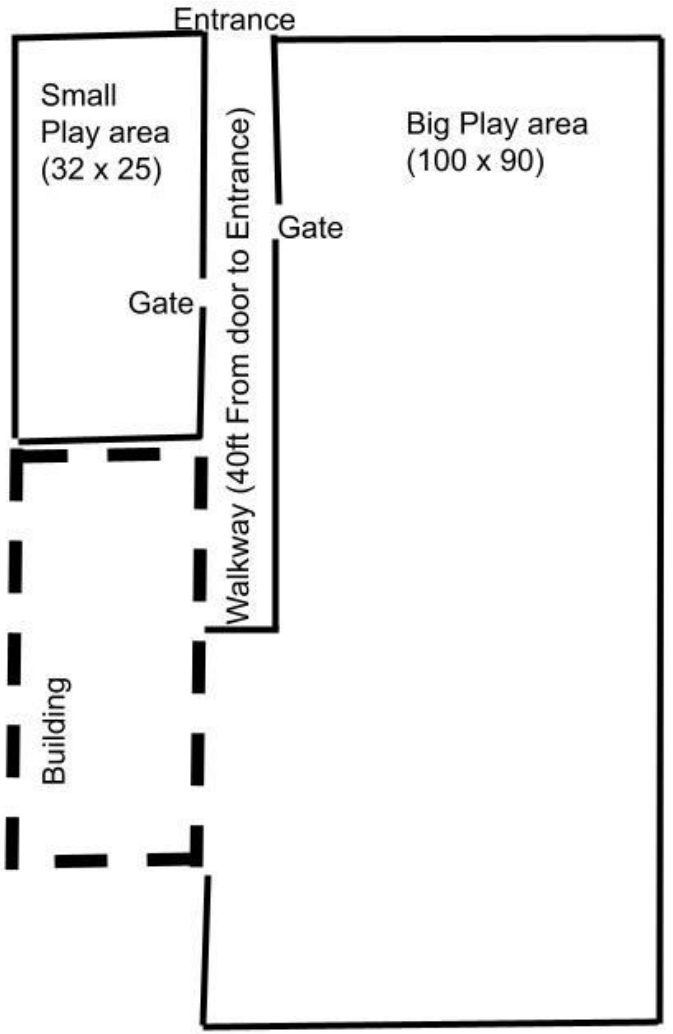
We are coming before you today to seek permission to not only incorporate more of these comforting dog suites but also to keep these dogs at our facility for more than three consecutive nights. Our 1,728 sqft facility with an even larger outdoor area has more than enough room to handle boarding 5+ dogs comfortably and to keep any barking down to a minimum. Being able to keep dogs for longer than 3 consecutive days would be a major benefit to Dog Dood boarding service, as many people take vacations or have commitments lasting longer than 3 days that they would need dog care for. By allowing us to meet this need, the City of Minot will have a great effect on the economy of our city and be a tremendous benefit to help our small business thrive- something that is a beautiful priority of Minot, the support of small businesses.

Thank you for your time,

Mark & Caitlyn Medalen, Owners of Dog Dood

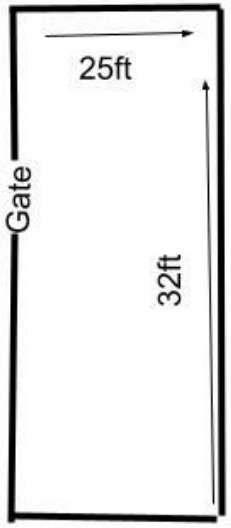
Exhibit 3

Exhibit 4

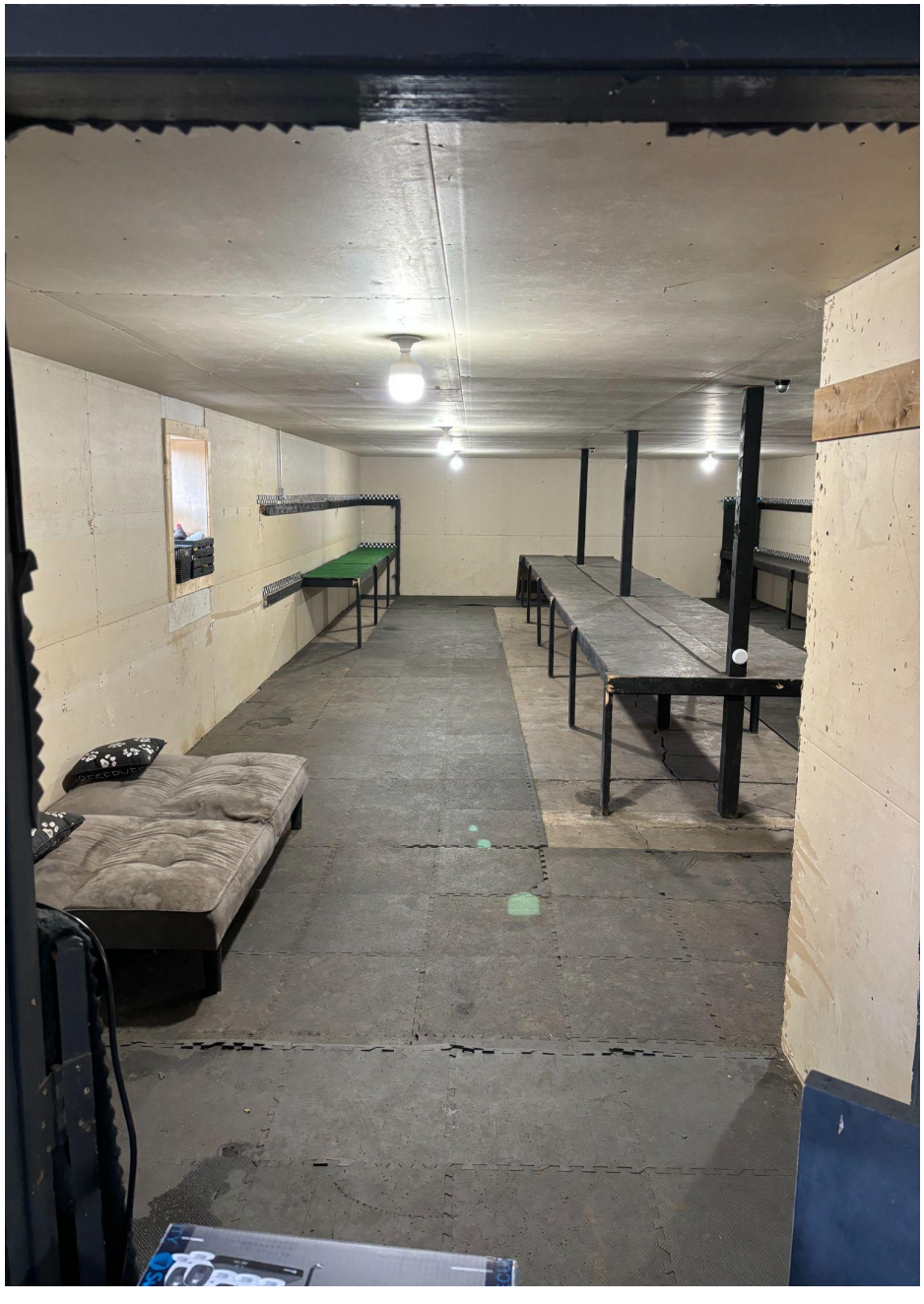

Entrance
Small
Play area
(32 x 25)
Gate
Walkway (40ft From door to Entrance)
Gate
Big Play area
(100 x 90)
Building

"Small play Area"

Dimensions:
32ft long x 25ft wide



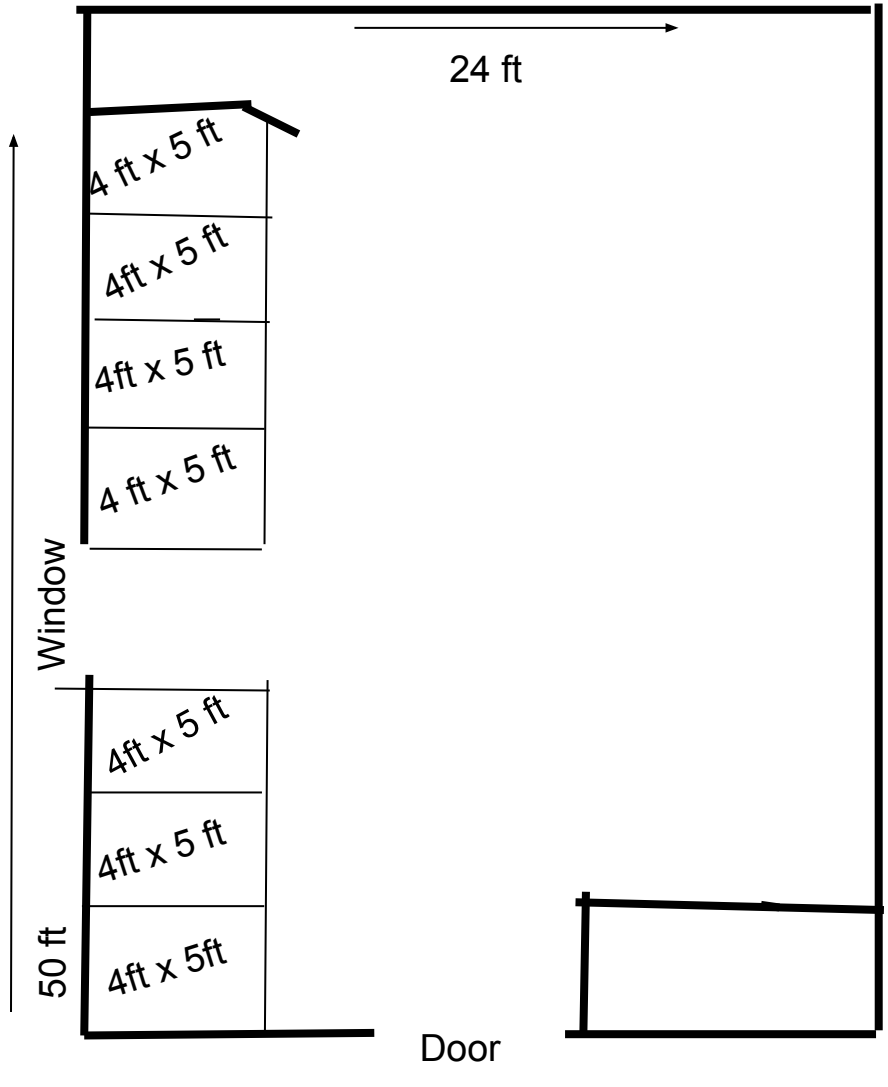
"Big Play" area
Dimensions: 100 ft long x 90ft wide



“Big play area”

Dimensions:

- 50 ft Long x 24ft Wide



“Main Play area”
Dimensions: 22ft x 15 ft

Currently 4 suites in area to allow space for dogs in suites and space for dogs at daycare to still play.

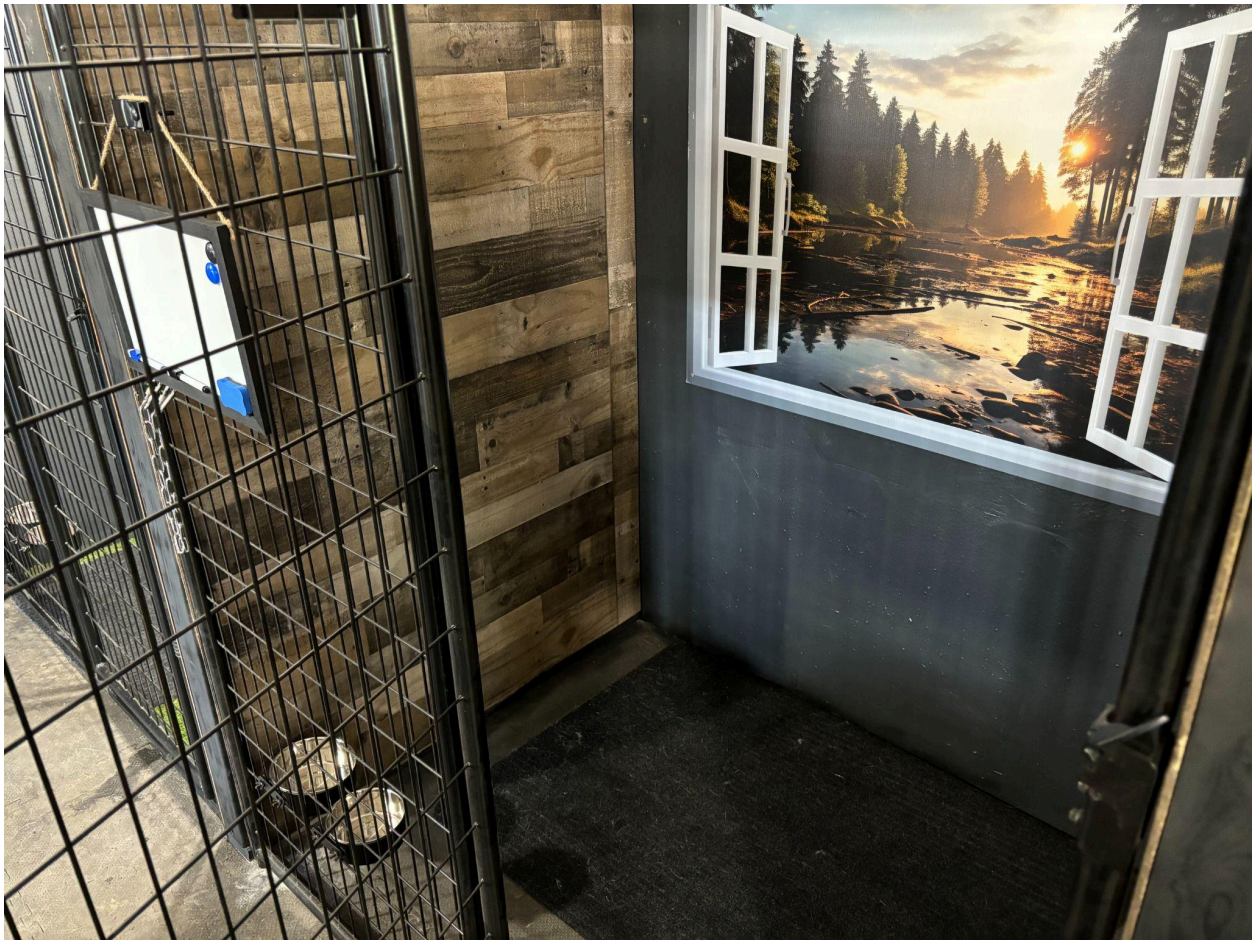
“Small Play area”
Dimensions: 10 ft x 13ft

Currently 1 suite in area to allow space for dog in suite and space for dogs at daycare to play comfortably.

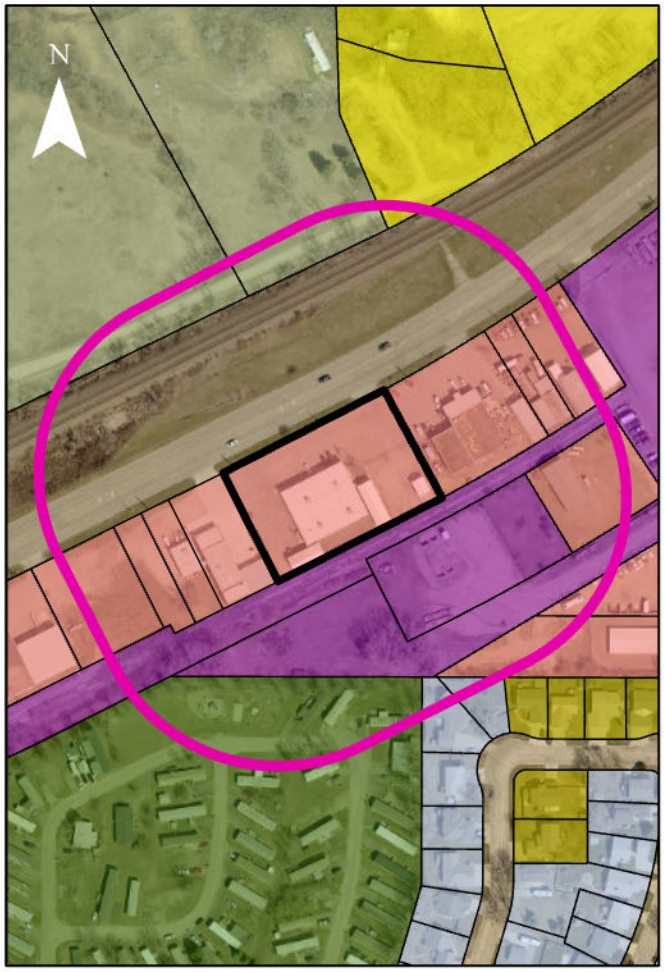
Example of dogs in Canine Cabin suite

Example of dogs in Pup Palace suite

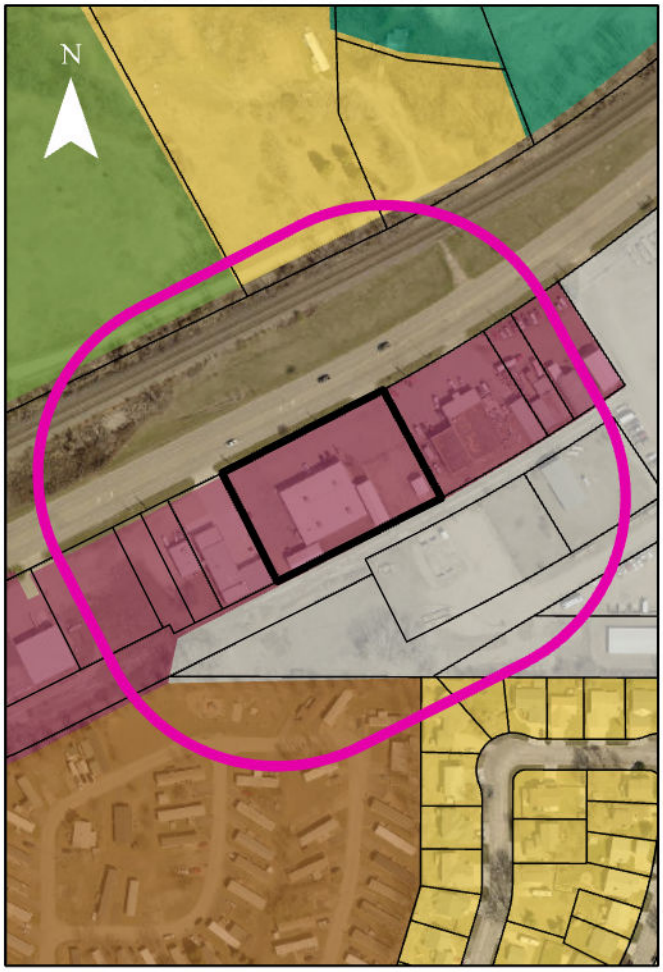
GATE
master paws



ZONING



FUTURE LAND USE



0 150 300 600 Feet

Zoning

Zoning	
	AG
	C2
	M1
	MH
	R1
	R2
	R4

Both Maps

	Case # 2024-04-03
	Case # 2024-04-03 Notification Area

Land Use Type

	Suburban Residential
	General Commercial
	Parks And Recreation
	Light Industrial
	Riverfront Activation
	Manufactured Home Community

Exhibit 6 – Site Photos

Facing North

Facing West

Facing East

Facing South

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COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT is made and entered into this 1st day of May, 2023, by and between Vision 2020 LLP ("Landlord") with an address of 1304 10th Street SW, Minot, ND 58701, Dog Dood LLC ("Tenant") with an address of 414 23rd Street SW, Minot, ND 58701, and Mark Medalen and Caitlyn Medalen of 414 23rd Street SW, Minot, ND 58701 ("Personal Guarantors").

In consideration of the rents and covenants herein contained, Landlord hereby rents to Tenant the premises located in the City of Minot described as approximately 1,728 square foot storage building, and the fenced in area, on the east side of the main building located at 1821 Burdick Expressway West, Minot, ND 58701 ("Premises"), more fully described in **Exhibit A** attached hereto and included herein by reference, upon the following terms and conditions:

1. **TERM:** The term of this Lease Agreement shall be for the term of three (3) years commencing on the 1st day of May, 2023 and ending on the 30th day of April, 2026.

2. **RENT:** Tenant shall pay to Landlord as rental for the Premises, a monthly rental rate of $1,650.00 for the first (1st) year of the lease. Thereafter, rent shall be $1,700.00 per month for the second (2nd) year of the lease term and $1,750.00 per month for the third (3rd) year of the lease term. All rents shall be payable in advance on the first day of each month during the term of the Lease. Rent for any partial month, if any, shall be prorated. Failure to remit rent by the fifth (5th) day of any month shall result in a flat rate late fee of $250.00. Should the Tenant hold over after expiration of this term without exercising the option or executing a new agreement, said lease shall continue as a month-to-month lease under the same terms and conditions, except that rent shall be increased to $2,500.00 per month.

3. **EXTENSION OPTION:** Provided Tenant is not in default of this Lease, Tenant shall have the option to extend the term for a single three-year period, which option shall be exercised, if at all, not less than one hundred and twenty (120) days prior to the expiration date of the current term. All options shall be exercised in writing. If Tenant exercises its option, the Lease shall continue on the same terms and conditions as herein provided except for rent increases as follows: Monthly rent for year four (4) shall be $1,800.00, monthly rent for year five (5) shall be $1,850.00, and monthly rent for year six (6) shall be $1,900.00.

4. **EARLY TERMINATION OPTION:** During the term of this lease, Tenant shall have the option to terminate the lease upon one hundred twenty (120) days written notice to Landlord. Tenant shall vacate the premises and pay to the order of the Landlord the sum of Four Thousand Nine Hundred Fifty Dollars ($4,950.00) before the 120-day time period expires. Tenant shall be obligated to pay rent, utilities, and all other tenant expenses as normal until the 120-day time period expires. In the event that Tenant exercises the early termination option herein and complies with all requirements, Landlord shall release Tenant from any and all remaining obligations under this Agreement.

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5. **SECURITY DEPOSIT:** A security deposit shall be paid by Tenant to Landlord in the amount of $1,650.00 at the time this Commercial Lease Agreement is executed and shall be maintained and utilized in accordance with North Dakota law.

6. **PERSONAL GUARANTY:** Guarantors hereby guaranty full performance of the Tenant of Tenant's lease obligations. It shall be a material inducement for Landlord to enter into this Lease and that Landlord obtain the personal guaranty(s) of the personal guarantors with respect to all obligations owed by Tenant under this Lease. The guaranty(s) hereunder shall remain in effect during the entirety of the Tenancy, including any extensions thereof. Furthermore, the guaranty(s) shall remain in full force and effect after the lease term ends and until all financial obligations have been satisfied.

7. **USE OF PREMISES:** Tenant covenants and agrees, so long as this Lease remains in force, to continuously use and occupy the Premises as a dog daycare business, with and for no other purposes whatsoever without the prior written consent of the Landlord. Tenant's employees and officers shall have access to the shared bathrooms on the west side of the office building, however, Tenant's customers shall not be given access. Tenant agrees to operate its business on the Premises during the entire term of the Lease and to conduct its business in a reputable and professional manner. Tenant shall not commit or allow to be committed any waste upon the Premises nor any public nor private nuisance. No use shall be made of the Premises which is illegal, unlawful, or conflicts with any statute, law, ordinance, rule or regulation. Tenant shall obtain all necessary permits and licenses required for the business use anticipated for the Premises. Tenant shall not do, nor permit to be done, any act or thing on the Premises that disturbs the quiet enjoyment of any other occupant of the property in which the Premises is located. Dog barking that persists for more than two (2) minutes shall be considered a disturbance of quiet enjoyment. If such barking occurs three (3) or more times, the Tenant shall be subject to an immediate eviction action. Video recordings of dog barking for a duration of two (2) minutes is conclusive proof. No mail boxes will be provided by the Landlord for the Tenant's use. Tenant must receive and/or send mail, packages, and other items via another address or post office box.

8. **IMPROVEMENTS:** Tenant shall not make any alterations, modifications, or improvements to the Premises without prior written approval by Landlord. All such changes shall be as Tenant's sole expense. Landlord hereby specifically approves the proposed changes outlined in **Exhibit B**, which is attached hereto and incorporated herein by reference. Improvements listed as "permanent" on **Exhibit B** shall stay with the property at lease termination, however, improvements listed as "temporary" shall be removed at Tenant's option on or before the date of lease termination.

9. **ACCEPTANCE AND CONDITION OF PREMISES:** Landlord warrants that the Premises will be of sound and habitable condition and meet all applicable federal, state and local codes. Tenant hereby accepts the condition of the Premises "as is". Tenant shall not be responsible or liable for the condition of the property prior to lease commencement. Attached hereto and included herein by reference as **Exhibit C** are four (4) pages of photographs depicting the current condition of the premises.

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10. **UTILITIES AND SERVICES:** Snow removal, lawn care, and landscaping shall be provided and paid by the Landlord for all areas except the fenced-in area. Tenant agrees to pay for all other utilities and services. This includes but is not limited to gas, electricity, garbage/waste, water, phone, internet, and cable. Tenant shall provide all of its own janitorial services for the Premises. Landlord shall insure that the electricity to the Premises is separately metered for Tenant's use. Tenant shall provide their own portable water system(s).

11. **TENANT'S OBLIGATIONS FOR REPAIRS AND MAINTENANCE:** Landlord shall ensure that the electrical system continues to operate during the lease term, however, routine maintenance such as changing light bulbs, adding outlets, and/or repairing/adding light fixtures, shall be the Tenant's responsibility. Landlord shall maintain and repair the roof of the premises during the terms of this lease to ensure there are no water leaks. Except for as stated above, all repairs and maintenance of the Premises, and the costs thereof, shall be the responsibility of the Tenant during this lease. Tenant shall keep, or shall cause the Premises to be kept, in good order, condition and repair. Tenant shall, at its expense, keep, repair. and maintain the Premises (including but not limited to: store fronts, fenced-in areas, fixtures, equipment, lighting, heating and plumbing systems, interior and exterior exterior walls, and any air conditioning system) in clean, neat and good order, condition and repair.

12. **ASSIGNMENT BY TENANT:** Tenant shall not voluntarily or involuntarily, assign, sublet, license, franchise, transfer, mortgage, or otherwise encumber all or any part of the Premises or Tenant's interest in this Lease without the prior written consent of the Landlord.

13. **INDEMNITY:** Tenant agrees to keep the Premises covered with liability insurance per this Lease at the cost of Tenant and to name Landlord as an additional insured under that policy in an amount of at least $1,000,000.00 (One Million Dollars) per occurrence, at the sole cost of Tenant. In addition, Tenant agrees to indemnify and hold Landlord harmless from any loss, expense, action, claims or damages of any kind or nature arising out of Tenant's use of the Premises by Tenant, Tenant's employees, invitees, agents or visitors. Landlord shall not be liable for any injury or loss on or about the Premises to Tenant, its employees, agents, invitees, subtenants, licensees or concessionaires or any other damage to property. Additionally, Landlord agrees to indemnify and hold Tenant harmless from any loss, expense, action, claims or damages of any kind or nature caused by Landlord's negligence or the negligence of Landlord's employees and/or agents.

14. **ENTRY:** Landlord or his representatives shall have the right to enter the Premises at all reasonable times to inspect, make repairs or alterations or show the Premises to prospective purchasers or lenders, after giving reasonable notice to Tenant. Tenant shall not be entitled to abatement of the rent by reason thereof. At all times during the term of this Lease, Landlord shall have the right to post "for sale" or "for lease" signs on the Premises, so long as the signage does not interfere with the Tenant's use and enjoyment of the Premises or interfere with or obstruct Tenant's signage.

15. **DEFAULT:** The following events shall be deemed to be a default by Tenant: 1) failure to pay any installment of rent, and such failure shall continue for three (3) days, 2) failure

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to comply with any provision of this Lease, other than payment of rent, and shall not cure such failure within three (3) days after written notice is sent to Tenant, 3) Tenant becomes insolvent; makes a transfer in fraud to creditors; makes an assignment for the benefit of creditors; files a petition under any section of the National Bankruptcy Code.

Upon the occurrence of any default set forth above. Landlord shall have the option to file a Forcible Detainer or related action without prior notice, in the proper court, and obtain a writ of possession or eviction thereby. Landlord shall be entitled to all expenses, court costs and reasonable attorney's fees for the collection of any sum due under this Lease and the enforcement of this agreement. All past due rentals shall bear interest at the highest rate permitted by the laws of this state. Landlord is specifically given the right to seek injunctive relief against Tenant in the event of default.

16. **WAIVER:** Acceptance of delinquent rent, or prior waiver of any of Landlord's rights to prompt payment or damages in event of subsequent default or breach of Tenant shall not otherwise modify any of the other terms of this Lease.

17. **INSURANCE:**

a. Landlord. Landlord will procure and maintain all risk coverage, at its expense, as from time to time is included in standard extended coverage endorsements and special broad form coverages insuring the structure (including exterior of building) in question.

b. Tenant. Tenant shall keep in full force and effect at its expense, a policy or policies of public liability insurance with respect to the Premises and the business of Tenant and any approved subtenant or licensee, with companies licensed to do business in the state of North Dakota, and approved by Landlord, in which both Tenant and Landlord and any person, firm or corporation designated by Landlord, shall be adequately covered under reasonable limits of liability not less than $1,000,000.00 combined single limit personal injury and property damage coverage per occurrence. Tenant shall furnish Landlord with certificates or other evidence acceptable to Landlord that such insurance is in effect which evidence shall state that Landlord shall be notified in writing thirty (30) days prior to cancellation.

18. **DAMAGE AND/OR CONDEMNATION:** In case during the term hereof, the Premises become untenantable by fire, or casualty, then rent shall abate, with proportionate refund of any prepayment, from the time of such occurrence until Landlord restores the Premises; provided that if the building of which the Premises are a part or thereof be so injured as in the opinion and at the option of the Landlord the possession of the Premises is needed by Landlord for demolition, reconstruction, sale, or any other purpose whatsoever, the Landlord may by written notice to Tenant wholly terminate the term of this Lease. In the event the building of which the Premises is a part shall be taken, in whole or in part, by condemnation or the exercise of the right of eminent domain, the Landlord may terminate this Lease by written notice to Tenant and prepaid rent shall be proportionately refunded.

19. **PEACEABLE SURRENDER:** Upon termination of this Lease, whether upon expiration of the term or otherwise, Tenant shall peaceably quit and surrender to Landlord

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the Premises in good condition and repair, ordinary wear and tear excepted. All "permanent" improvements constructed by Tenant to become part of the property of Landlord. Tenant shall have the option to remove any "temporary" improvements upon lease termination. Any damage to the Premises caused during the Tenancy shall be paid for by the Tenant.

20. **TAXES AND ASSESSMENTS:** Landlord shall pay all real estate taxes and special assessments levied on the Premises during the term of this lease agreement.

21. **LAW:** Tenant agrees to comply with all laws, rules and orders of federal, state and municipal governments and all other departments. Furthermore, this Lease will be interpreted in accordance with the laws of the State of North Dakota and all parties agree that proper venue for any litigation involving the terms and conditions of this agreement is properly venued in Ward County, North Dakota.

22. **GENERAL PROVISIONS:**

a. All covenants, conditions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

b. The captions of paragraphs of this Lease Agreement are not a part of this Lease and shall have no effect upon the construction or interpretation of any term of this Lease Agreement.

c. Time of payment shall be an essential part of this Lease Agreement.

d. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provisions of this Lease Agreement and all other provisions shall remain in full force and effect.

e. Whenever the consent of the Landlord is required under the terms of this Lease Agreement, the giving or withholding of such consent of any one or any number of instances shall not limit nor waive the need for such consent in any other or future instance.

f. This Lease Agreement contains all the agreements of Landlord and Tenant with respect to any matter covered or mentioned in this Lease Agreement and no other prior Agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease Agreement may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors in interest.

[SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the Landlord has caused this Lease Agreement, consisting of seven (7) total pages, including signature pages, to be duly executed as of the day and year first above written.

LANDLORD:

VISION 2020 LLP

DocuSigned by:
Nathan Stremick
5D592D100EE148E...

By: Nathan Stremick
Its: Managing Partner

IN WITNESS WHEREOF, the Tenant and Personal Guarantors have caused this Lease Agreement, consisting of seven (7) total pages, including signature page(s), to be duly executed as of the day and year first above written.

TENANT:

DOG DOOD LLC

Mark Medalen dotloop verified 05/01/23 12:48 PM CDT PAXV-5DQG-YSUV-OXQC

By: Mark Medalen
Its: Owner

Caitlyn Medalen dotloop verified 05/01/23 12:50 PM CDT HQRB-QGQX-KC2R-QBXQ

Caitlyn Medalen
Its: Owner

PERSONAL GUARANTORS:

Mark Medalen dotloop verified 05/01/23 12:48 PM CDT VEWC-7BMY-BO9F-KFMN

Mark Medalen

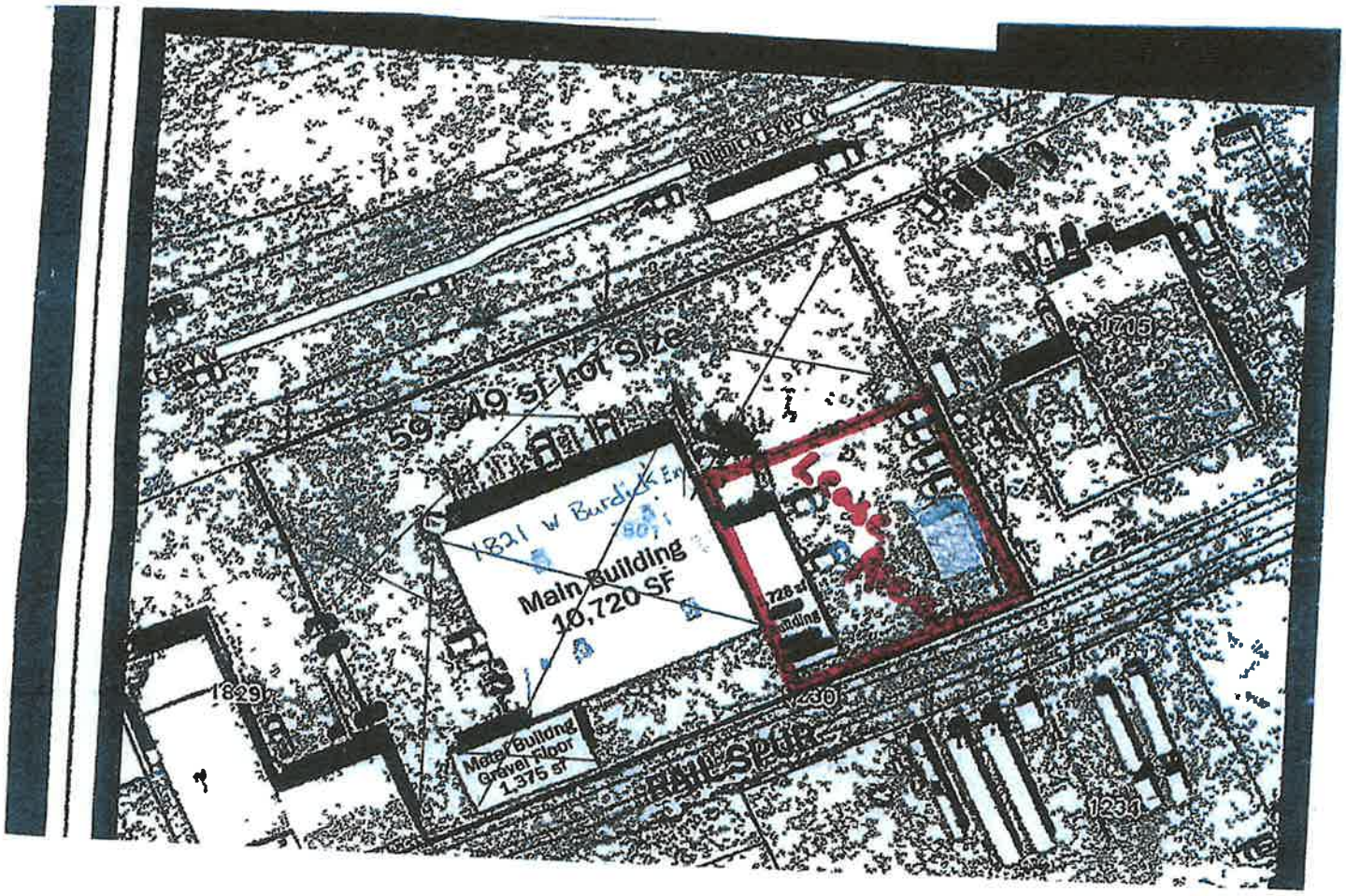
Caitlyn Medalen dotloop verified 05/01/23 12:50 PM CDT 01RS-WI4U-6RXN-ALPH

Caitlyn Medalen

DocuSign Envelope ID: E86483A6-4812-4551-88E5-89DBEFAD330A

Exhibit A to Lease Agreement

Fenced in area and 1,728 square foot storage building on the east side of the Main Building only.



DocuSign Envelope ID: E86483A6-4812-4551-88E5-89DBEFAD330A

RENOVATION LIST

Updated April 26, 2023

Below are renovations we plan to make- separated by permanent improvements & temporary. Also attached are before photos of holes, cracking, rusting, etc. of white storage building *before* our lease takes effect which we are not responsible to have fixed post-lease.

Permanent Improvements (at expense to tenant, to be assumed by landlord)

- Doors
  - Front Door: Replace industrial doors with glass doors/doors with windows- may need some reframing to fit appropriately
  - Remove interior doors (& place temporary half-gates in their place)
- Window
  - add one window in back room (for AC unit)
- Walls
  - Texture spray + paint walls & ceilings
  - Potentially, for aesthetic: Wallpaper, Board & Batten in entryway
- Stairs
  - Fix + Paint the cemented stairs
  - Add a new safety rail to the staircase
- Fencing
  - Fix Silver, chain link fence that is broke in the back corner of the lot
- Electric
  - 1 Heater in corner of back room
- Remove
  - Remove the wooden shelving units there now

Interior doors & wooden shelving units to be stored by Landlord (if he wants to keep them).

Temporary Improvements (at expense to tenant, to be kept by tenants post lease)

- Signage
  - Dog Dood signage use on fence gate, white building (to cover pre-existing hole) & inside white storage building
- Fencing
  - Privacy fencing on outside of fenced lot
  - Semi-Permanent No-Dig Chain link fence to be use within the fenced lot for separation purposes
- Flooring
  - Removable Rubber Flooring
- Temporary Additions
  - 2 Portable AC Units
  - Temporary landscaping for walkway aesthetic

City of Minot

Planning Commission
Staff Report

Application Date: 03/15/2024
Date of Staff Report: 04/29/2024
Date of Planning Commission Meeting: 05/07/2024

Staff Contact: Doug Diedrichsen, Principal Planner
Staff Recommendation: Denial

Case Number: 2024-03-01
Project Name: Popeyes Restaurant – Variance
Current Legal Description: See the project description below.
Proposed Legal Description: No Change

Present Address: 300 28th Ave SW

Entitlements Requested: Variance Request

Owners: MYLA Properties, LLC

Representative: Harold Rose

Present Zone(s): "C2" General Commercial

Present Use(s): Restaurant (New Build no Final Certificate of Occupancy)

Uses Allowed in Present Zone(s): See Table 2.2 for allowed and conditionally permitted uses within each district.

Present Future Land Use Map Designation: General Commercial

Proposed Zone(s): No Change

Proposed Use(s): No Change

Uses Allowed in Proposed Zone(s): See Table 2.2 for allowed and conditionally permitted uses within each district.

Proposed Future Land Use Map Designation: No Change

PROJECT DESCRIPTION:

Public hearing request by Harold Rose representing MYLA Property, LLC., owner for a variance for a "C2" General Commercial District lot. The legal description for the property is Outlot 9 of the northeast 1/4 less highway right-of-way Section 35, Township 155 north, Range 83 west, County of Ward, North Dakota.

An aerial photo of the subject property can be found in **Exhibit 1.**

BACKGROUND INFORMATION:

The property owner is requesting a variance for relief of buffer yard requirements (Section 7.1-4. C.) and street landscaping and site landscaping requirements (Section 7.1-3. A & C.) as outlined in the City of Minot's Land Development Ordinance (LDO). A development review team (DRT) meeting was held with the applicant on February 15th,2023 where the applicant was made aware of all of the site design standards required in the LDO and these minutes were provided to the applicant on February 23rd, 2023. A landscaping site plan was submitted as a part of the building permit application process and approved by the Planning Division and is available in Exhibit 3.

At the time of final inspection, it was noted by the City Building Inspector that the building and site as constructed had deviated from the approved plan considerably. The Inspector brought these concerns to the attention of the Principal Planner and Community Development Director. A meeting was scheduled with the applicant on March 15th, 2024 to discuss options moving forward. Requirements for the applicant to be issued a temporary certificate of occupancy were outlined by city staff at that time. The applicant was asked to submit a new proposed site plan, proof the City Forester had been contacted about street tree planning/planting, landscaping bond, variance application and a letter to engineering regarding the need for construction of a retaining wall on the north side of the property that was included in the plan and was not constructed. These items were submitted and the temporary certificate of occupancy was issued to allow for the application process for the variance.

The 2/15/23 Development Review Team meeting minutes are provided in **Exhibit 2.**

The proposed Landscaping Plan (Amendment to 09-25-03 Iteration) is provided in **Exhibit 3.**

The approved Landscaping Plan (09-25-03 Iteration) is provided in **Exhibit 4.**

The zoning and future land use map designation of the subject property and surrounding area is provided in **Exhibits 5**.

Site photos are provided in **Exhibit 6**.

STAFF ANALYSIS:

Section 9.1-3 of the Land Development Ordinance of the City of Minot (LDO) provides the application procedures for variances, the types of variances allowed, and criteria necessary for approval by the Planning Commission. The applicant has submitted the necessary application documents required per Section 9.1-3 C. and noticing has been conducted per Section 9.2-1.

Section 9.1-3 G. requires the Planning Commission find that the applicable criteria for a unique hardship has been satisfied. To that end, staff provides the following guidance:

1. Sections 9.1-3. G. 1. A variance may not be approved unless the Planning Commission finds that there exists a unique hardship. The strict application of the applicable standards will constitute a unique hardship due to circumstances unique to the property not created by the landowner, not including economic or fiscal hardship. A unique hardship is limited by the LDO to one or more of the following; shape of property, topography or exceptional practical difficulties.

2. Staff finds that the variance criteria provided in Sections 9.1-3. G. 1. a. is not applicable. Requests relating to this provision are relevant on odd shaped lots or lots that are too shallow or narrow to accommodate development when all setbacks and other design requirements are considered. A site plan was submitted by the developer's Licensed Engineer and approved by the City of Minot for this property that met all of the design criteria for a restaurant drive-thru located in a "C2" General Commercial District as outlined in the LDO. If the site had been developed consistent with the site plan that was approved, the site would have met all relevant design standards. However, the Developer did not follow this site plan, which means any criteria arguably in favor of this provision were created by the Developer. Given the same, staff believes the exceptional shallowness or shape of the of a specific piece of property criteria is not satisfied.

3. Staff finds Section 9.1-3. G. 1. b.is not applicable. Requests for a hardship under this criteria are related to the topography of the lot as excessive slope can limit a buildable area so that would it would not accommodate development meeting all design standards. A site plan was submitted by the developer and approved by the City of Minot that included engineered elements (a retaining wall) to allow the site to be developed while mitigating the effects of the topography of the subject property. The Developer has not installed the retaining wall, and built his site in a manner contrary to the approved site plan. Therefore, staff believes the section relating to the topography of the property is not satisfied.

4. Staff finds Section 9.1-3. G. 1. c. relating to there being exceptional practical difficulties that would prevent the reasonable use of the property is not satisfied. A site design was created by a licensed design professional and approved by the City of Minot that showed the development potential of the subject property. Staff believes this section is not satisfied because any exceptional practical difficulties existing at present could have been alleviated had the Developer and his Contractor followed the approved site plan.

5. Staff finds Section 9.1-3. G. 2. a. relating to the granting of the variance and its effect on the rights of property owners in the surrounding neighborhood or the character of the neighborhood is applicable and is not satisfied because the commercial use adjacent to medium density residential could create significant visual and noise nuisances to neighboring property owners without the required mitigating design elements incorporated into the site. As defined in the LDO buffer strip/buffer yard are landscaped areas used to visibly separate incompatible uses or to shield or block noise, light or other nuisances.

6. Staff finds Section 9.1-3. G. 2. b. relating to the variance not being contrary to the comprehensive plan is not satisfied. As discussed in the Development Characteristics section of Chapter 3 of City of Minot 2024 Comprehensive Plan buffing/landscaping should be incorporated to soften the transition between commercial and residential developments. The Landscaping section of Chapter 9 of the City of Minot 2024 Comprehensive Plan outlines the need for properly landscaped development within all commercial

zoning districts and states the “maintenance concerns should not supersede aesthetic considerations”. Chapter 9 also reinforces the need for the LDO to determine setback widths and standards that consider the characteristics of the roadway and the building.

Comments:

1. Several public comments were received at the time of writing this staff report.

    a. These comments related to noise, light and traffic/parking impacts felt by the adjacent property owners due to the initial operations of the restaurant.

    b. Those providing comment were encouraged to submit them in writing or to appear at the public hearing in order to have these comments considered by the Planning Commission and entered into the public record.

2. The application was distributed to city departments and external public agencies within the City for review and the comments received were incorporated into this report through an iterative process involving multiple drafts.

FINDINGS OF FACT:

The Minot Planning Commission should accept the following findings of facts:

1) The applicants have submitted a complete application.

2) The property is zoned “C2” General Commercial on the Official Zoning Map requiring compliance with “C2” General Commercial District design standards and has a “General Commercial” designation on the Future Land Use Map of the 2040 Comprehensive Plan.

3) The variance does not meet the applicable criteria per 9.1-3 G., as outlined in the Staff Analysis section of the Planning Commission Staff Report.

4) The Minot Planning Commission has the authority to hear this case and decide whether it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

RECOMMENDATION:

Staff recommends the Planning Commission adopt staff findings of fact and:

Deny a variance to the Section 7.1-4. C. & Section 7.1-3. A & C. related to street landscaping, site landscaping and buffer yard standards.

Alternative Recommendation

It may be possible for the applicant to address the concerns outlined in the Staff Analysis section of staff's written report and provide a reasonable strategy to mitigate the possible noise and light nuisances by removing existing built elements to make room for the required landscaping elements and buffers. This could be done by reconfiguring the site and removing some paving. The possibility of land acquisitions from adjacent property could also be explored to achieve the goal of a conforming site. To this end, staff provides the following alternative recommendation to allow the applicant additional time to address its nonconforming conditions and propose an alternate solution in the form of a site plan, created by a licensed design professional, conforming to the LDO design standards.: Table the item until Tuesday, June 4, 2024 at 5:30p.m. in the Council Chambers of City Hall.