



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: October 4, 2016

FROM: Carl D. Hokenstad, AICP, Director of Community Development

ITEM: Elimination of CR District – Zoning Ordinance Text Amendment

REQUEST

The City of Bismarck's Community Development Department – Planning Division has initiated this zoning ordinance text amendment in order to eliminate the CR - Commercial zoning district. On July 26, 2016, the Bismarck City Commission voted unanimously to amend the zoning map to transition all remaining parcels in the CR – Commercial zoning district to the CG – Commercial zoning district. This action was completed with the anticipation of the elimination of the CR – Commercial zoning district, which is the action currently being proposed.

The zoning ordinance text amendment also cleans up a few references to the CB – Commercial zoning district that was removed from Title 14 (Zoning Ordinance) in 2006.

Please place this item on the October 11 City Commission meeting and the October 25, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on this item on September 28, 2016.

No members of the public spoke at the public hearing.

At the conclusion of the hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning ordinance text amendment as outlined in Ordinance 6234.

RECOMMENDED CITY COMMISSION ACTION

October 11th Meeting of the Board of City Commissioners – consider the request for the zoning ordinance text amendment as outlined in Ordinance 6234, and call for a public hearing on this item for the October 25th meeting of the Board of City Commissioners.

October 25th Meeting of the Board of City Commissioners – hold a public hearing on the zoning ordinance text amendment as outlined in Ordinance 6234 and take final action on the proposed amendment.

STAFF CONTACT INFORMATION

Please contact Daniel Nairn, AICP, the, the planner in our office assigned to this request, at 355-1854 or dnairn@bismarcknd.gov or Kim L. Lee, AICP, at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meeting.

CITY OF BISMARCK

Ordinance No. 6234

First Reading _____
Second Reading _____
Final Passage and Adoption _____
Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-03-01, 14-03-06, 14-03-08 AND 14-05-05.1 OF THE BISMARCK CODE OF ORDINANCES (REV.) AND TO REPEAL SECTION 14-04-13 OF THE BISMARCK CODE OF ORDINANCES (REV.), RELATING TO DIVISION OF THE CITY INTO DISTRICTS, INCIDENTAL USES, SPECIAL USES, ACCUMULATION OF CERTAIN ITEMS PROHIBITED, AND THE CR - COMMERCIAL ZONING DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Division of City Into Districts is hereby amended and re-enacted to read as follows:

14-03-01. Division of City Into Districts. For the purpose of these regulations, the city is hereby divided into twenty classes of districts, which are established as follows:

- RR Residential (rural single-family)
- RR5 Residential (rural single-family - 5 acres)
- R5 Residential (single-family)
- RMH Residential (manufactured home park)
- R10 Residential (two-family)
- RM Residential (multifamily)
- RT Residential (office - multifamily)
- HM Health-Medical
- CA Commercial (neighborhood)
- ~~CB Commercial (downtown)~~
- CG Commercial (heavy commercial)
- ~~CR Commercial (regional shopping center)~~
- MA Industrial (light industrial)
- MB Industrial (heavy industrial)

P Public
 A Agricultural
 PUD Planned Unit Development
 FP Floodplain
 AN Airport Noise
 DC Downtown Core
 DF Downtown Fringe

Reference: NDCC Sec. 40-47-02; (Ord. 4424, 03-31-92; Ord. 4936, 09-08-98; Ord. 5422, 10-24-05)

Section 2. Amendment. Section 14-03-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Incidental Uses is hereby amended and re-enacted to read as follows:

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

* * * * *

3. Portable Storage Containers.

* * * * *

c. Portable storage containers in commercial zoning districts.

1. Portable storage containers are allowed in the CA~~7~~ and CG and ~~CR~~ Commercial Zoning Districts for the purpose of storage of seasonal merchandise during the following time periods: November 1 through January 15, and April 1 through June 15.

* * * * *

(Ord. 4235, 1-17-89; Ord. 4327, 4-24-90 & 5-01-90; Ord. 4341, 9-11&18-90; Ord. 4529, 07-06-93; Ord. 4634, 09-27-94; Ord. 4772, 06-25-96; Ord. 4880, 12-30-97; Ord. 5237, 02-25-03; Ord. 5372, 11-23-04; Ord. 5447, 07-26-05; Ord. 5468, 10-25-05; Ord. 5528, 06-27-06; Ord. 5728, 05-26-09; Ord. 5902, 06-26-12; Ord. 6028, 01-28-14; Ord. 6109, 03-24-15; Ord. 6203, 05-24-16)

Section 3. Amendment. Section 14-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Special Uses is hereby amended and re-enacted to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size,

safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

* * * * *

2. Temporary uses (administrative approval). The Zoning Administrator is authorized to grant permits for certain temporary uses without a public hearing or approval of the city planning and zoning commission. All temporary structures used for the following uses shall be removed within fifteen (15) days after termination of the use. The following are temporary uses to which such regulations apply:

a. For a religious meeting in a tent or other temporary structure in a CG, MA, MB or A district for a period not to exceed thirty (30) days.

b. For the open lot sale of Christmas trees in a CA, CG, ~~CR~~, MA, MB or A district for a period not to exceed forty-five (45) days.

c. For seasonal sales of nursery and bedding stock for a period of not more than ninety (90) days in a CA, CG, ~~CR~~, MA, MB or A district.

d. For sale of fireworks for a period of not more than thirty (30) days in a MA, MB or A district.

e. For sale of locally grown farm or garden produce in a CA, CG, ~~CR~~, MA, MB or A district of not more than ninety (90) days.

f. For temporary retail sales in a CA, CG, ~~CR~~ or MA district for a period not to exceed sixty (60) days.

g. For a show, circus, menagerie or carnival in a CA, ~~CR~~, CG, MA, MB, A or P Zone for a period of no more than ten days provided that proof of a bond or liability insurance as required by City Ordinance

4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

* * * * *

b. Off-Premise Advertising Sign: Off-Premise Advertising Signs may be permitted in any CG, ~~CR~~ MA, or MB district as an administrative special use provided:

* * * * *

e. Filling stations. A filling station may be permitted in a CA, ~~CB~~ CG, ~~CR~~ or MA district as a special use provided:

* * * * *

g. Drive-in/drive-through retail or service establishments. An establishment dispensing goods at retail or providing services through a drive-in/drive-through facility, including, but not limited to drive-in/drive-through restaurants, banks or other drive-in/drive-through facilities, exclusive of theatres, may be permitted in a CG, ~~CR~~ MA or HM district (drive-in/drive-through facilities for banks and drive-in/drive-through windows for pharmacies as an ancillary use to a medical office/clinic only may also be permitted in a CA district) as a special use provided:

* * * * *

m. Auto laundry-car wash. An auto laundry or car wash may be permitted in a CG, ~~CR~~ MA or MB district as a special use, provided:

* * * * *

s. Retail Liquor Sales. Retail liquor sales for Burleigh County Class AA, B, D and E liquor license holders may be permitted within the city's four-mile extraterritorial jurisdiction in any CA, ~~CB~~ CG, ~~CR~~ or MA district as a special use provided:

* * * * *

v. Small Wind Energy Systems. This section is intended to provide reasonable standards for the use of a Small Wind Energy System (SWES) which would allow electrical power consumers to supplement or replace their use of utility-provided electrical power without creating negative impacts to adjacent properties or the public.

* * * * *

6. Sound produced by a SWES shall not exceed the following limits at the property line:

| Zoning District | Day | Night |
|----------------------------------------------------|-----|-------|
| Residential: RR, RR5, R5, RMH, R10, RM, RT, HM, DF | 55 | 45 |
| Commercial: CA, CG, CR, DC | 60 | 50 |
| Industrial: MA, MB, P, A | 65 | 60 |

* * * * *

(Ord. 4136, 4-28-87; Ord. 4286, 08-22-89; Ord. 4312, 2-20-90; Ord. 4331, 6-05-90; Ord. 4425, 03-31-92; Ord. 4486, 04-27-93; Ord. 4563, 12-07-93; Ord. 4564, 11-23-93; Ord. 4598, 04-28-94; Ord. 4598, 04-28-94; Ord. 4620, 07-19-94; Ord. 4702, 06-13-95; Ord. 4713, 08-22-95; Ord. 4738, 11-14-95; Ord. 4739, 11-14-95; Ord. 4745, 02-13-96; Ord. 4802, 11-12-96; Ord. 4808, 11-12-96; Ord. 4912, 07-14-98; Ord. 4913, 06-09-98; Ord. 4936, 09-08-98; Ord. 4946, 10-27-98; Ord. 5027, 02-08-00; Ord. 5214, 11-12-02; Ord. 5218, 11-26-02; 5224, 12-17-02; Ord. 5228, 01-28-03; Ord. 5278, 09-23-03; Ord. 5317, 06-22-04; Ord. 5343, 06-22-04; Ord. 5348, 07-27-04; Ord. 5351, 08-24-04; Ord. 5438, 06-28-05; Ord. 5467, 10-25-05; Ord. 5527, 06-27-06; Ord. 5719, 05-12-09; Ord. 5728, 05-26-09; Ord. 5764, 01-12-10; Ord. 5820, 4-26-11; Ord. 5852, 11-22-11; Ord. 5958, 03-26-13; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14; Ord. 6050; 05-27-14, corrected 06-10-14; Ord. 6121, 05-26-15; Ord. 6122, 05-26-15; Ord. 6175, 11-24-15; Ord. 6179, 12-22-15; Ord. 6190, 03-08-16; Ord. 6218, 07-26-16);

Section 4. Amendment. Section 14-05-05.1 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Accumulation of Certain Items Prohibited is hereby amended and re-enacted to read as follows:

14-05-05.1. Accumulation of Certain Items Prohibited.

* * * * *

2. No person shall cause, permit, keep, accumulate or allow the accumulation of any junk, refuse, surplus, scrap, salvage or similar items outside of a closed building or opaque fencing in any commercially, industrially or agriculturally-zoned district absent a

special use permit. The items for which accumulations are prohibited under this section may include one or more of the following but are not limited to hazardous wastes, scrap metals, used or scrap lumber, household or commercial appliances, used building materials or salvage, construction demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, used tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items may have value does not excuse the conduct prohibited by this section. The prohibitions contained in this section shall apply to properties zoned ~~CA, DC, DF, PUD, CR, CG, MA, MB, or A~~ CA, CG, MA, MB, A, PUD, DC, or DF. Prior to signing a complaint under this section, the Health Officer or his or her agent must serve the property owner or tenant with a notice and order pursuant to Section 14-05-03.1.

(Ord. 4861, 08-12-97; Ord. 4936, 09-08-98; Ord. 5728, 05-26-09; Ord. 6028, 01-28-14)

Section 5. Repeal. Section 14-04-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the CR Commercial District is hereby repealed:

~~14-04-13. CR Commercial District.~~

~~1. General description. The CR commercial district is established as a district in which the principal use of the land is for regional shopping centers and related services. For the CR commercial district in promoting the general purposes of this article, the specific intent of this section is:~~

~~a. To prohibit residential, heavy commercial and industrial uses of the land, and to prohibit any other use which would substantially interfere with the development or continuation of commercial structures in the district.~~

~~b. To discourage any use which, because of its character or size, would interfere with the use of land in the district as a shopping and service center for the regional area served.~~

~~2. Uses permitted. The following uses are permitted:~~

~~a. Retail group A.~~

- ~~b. Service group A.~~
- ~~c. Office bank group.~~
- ~~d. Commercial recreational group.~~
- ~~e. Health medical group.~~
- ~~f. Religious institution.~~

~~The following uses are allowed under special uses pursuant to Section 14-03-08 hereof:~~

- ~~a. Temporary Christmas tree sales.~~
- ~~b. Temporary farm and garden produce sales.~~
- ~~c. Seasonal nursery and bedding stock sales.~~
- ~~d. Filling station.~~
- ~~e. Child care center.~~
- ~~f. Drive-in retail or service establishment.~~
- ~~g. Auto laundry car wash.~~
- ~~h. Retail liquor sales.~~
- ~~i. Off-premise advertising sign.~~

~~3. Lot area. No CR commercial district shall contain less than forty (40) acres.~~

~~4. District width. Each CR commercial district shall have an average width of not less than one thousand (1,000) feet and shall have no principal dimension less than five hundred (500) feet in length.~~

~~5. Floor area. The gross floor area of the principal building shall be not less than three hundred thousand (300,000) square feet.~~

~~6. Setback. A minimum setback of fifty (50) feet shall be required of the principal building except when it fronts on an interior street within the district. A~~

~~setback of at least twenty-five (25) feet shall apply for all other buildings.~~

~~7. Height limits. No building shall exceed fifty (50) feet in height.~~

~~8. Off-street parking. Off-street parking and loading shall be provided in accordance with the provisions of Section 14-03-10 of this Title. A site circulation plan shall be prepared by the shopping center and approved by the Zoning Administrator.~~

~~(Ord. 4462, 08-18-92; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5728, 05-26-09; Ord. 5958, 03-26-13; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14; Ord. 6123, 05-26-15; Ord. 6190, 03-08-16)~~

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 7. Effective Date. This ordinance shall take effect following final passage, adoption and publication.



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

September 28, 2016

Application for: Zoning Ordinance Text Amendment

TRAKiT Project ID: ZOTA2016-003

Project Summary

| | |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title: | Elimination of CR – Commercial Zoning District |
| Status: | Planning & Zoning Commission – Public Hearing |
| Project Contact: | Daniel Nairn, AICP, Planner |
| Sections Amended: | 14-03-01 Division of the City into Districts, 14-03-06 Incidental Uses, 14-03-08 Special Uses, 15-05-05.1 Accumulation of Certain Items Prohibited, 14-04-13 CR Commercial District |
| Request: | Remove the CR – Commercial zoning district from Title 14. |

Staff Analysis

On July 26, 2016, the Bismarck City Commission voted unanimously to amend the zoning map to transition all remaining parcels in the CR – Commercial zoning district to the CG – Commercial zoning district. This action was completed with the anticipation of the elimination of the CR – Commercial zoning district, which is the action currently being proposed. The Planning Division did not receive any opposition to the initial rezoning.

of land in the district as a shopping and service center for the regional area served.

The zoning district was only applied to three areas: the Gateway Mall area; the Kmart area; and the Kirkwood Mall area. Over the years the CR – Commercial zoning district has shrunken somewhat, as certain portions were rezoned to CG – Commercial to allow different forms of development.

The zoning ordinance text amendment also cleans up a few references to the CB – Commercial zoning district that was removed from Title 14 (Zoning Ordinance) in 2006.

The CR Zoning District was created in an era when the City wished to accommodate and protect large-scale enclosed malls with lesser parking standards. Each CR District must be at least 40 acres in size, and the principal building must have at least 300,000 square feet of floor area. However, neither the Gateway Mall nor the Kmart Area CR districts currently meet the 40 acre standard, and the Kmart building is only a third the size of the minimum requirement. In addition, the parking standards have since been changed and are now the same in both the CR and CG districts.

The reasoning for the removal of the CR – Commercial zoning district was included in the staff report for the rezoning action, and it is repeated here:

The CR – Commercial zoning district was established in 1974 with the following purposes:

- a. To prohibit residential, heavy commercial and industrial uses of the land, and to prohibit any other use which would substantially interfere with the development or continuation of commercial structures in the district.
- b. To discourage any use which, because of its character or size, would interfere with the use

An important difference between these two zoning districts is the uses allowed within each. The CR district is more restrictive than the CG – Commercial zoning district, as shown in the chart on the following page:

(continued)

P = Permitted
 X = Not Permitted
 SUP = Permitted with Special Use Permit

| | CG | CR |
|------------------------------------------|-----|-----|
| Multifamily Housing | P | X |
| Group dwelling | P | X |
| Multifamily high rise | P | X |
| Hotel-motel | P | X |
| Retail group A | P | P |
| Service group A | P | P |
| Office-bank group | P | P |
| Retail group B | P | X |
| Service group B | P | X |
| Commercial recreation group | P | P |
| Wholesale group | P | X |
| Health-medical group | P | P |
| Education group | P | X |
| Public recreation group | P | X |
| Railroad or bus passenger station | P | X |
| Commercial greenhouse | P | X |
| Commercial parking lot | P | X |
| Religious institution | P | P |
| Temporary Christmas tree sales | SUP | SUP |
| Temporary religious meetings | SUP | X |
| Temporary farm and garden produce sales | SUP | SUP |
| Seasonal nursery and bedding stock sales | SUP | SUP |
| Filling station | SUP | SUP |
| Drive-in retail or service establishment | SUP | SUP |
| Child care center | SUP | SUP |
| Small animal veterinary clinic | SUP | X |
| Golf driving range | SUP | X |
| Auto laundry - car wash | SUP | SUP |
| Retail liquor sales | SUP | SUP |
| Microbrewery | SUP | X |
| Off-premise advertising sign | SUP | X |

Setbacks and height limits are also significantly stricter in the CR than the CG Commercial zoning district, and the CR district includes its own minimum parking standards which contradict the updated parking requirements contained in Section 14-03-10.

Staff proposes this change to provide more flexibility for possible redevelopment opportunities within the districts currently zoned CR – Commercial. While there is still a market for the conventional enclosed malls that were built in the 1960s and 1970s, many of these sites around the country are also being redeveloped in a variety of ways. Staff does not see any reason to constrain the creativity of property owners with a zoning district that mandates a conventional retail mall model.

Furthermore, the elimination of a zoning district that is not widely utilized helps simplify the zoning ordinance and map, which enhances the ordinances accessibility to the public and general usability.

Required Findings of Fact

1. The proposed text amendment would not adversely affect the public health, safety or general welfare;
2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance;
3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance; and
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning ordinance text amendment that removes the CR – Commercial zoning district from Title 14 and eliminates references to the CR and CB zoning

(continued)

districts throughout Title 14, as outlined in the attached draft ordinance.

Attachments

1. Draft zoning ordinance amendment
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Staff report prepared by: Daniel Nairn, AICP, Planner
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