

CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
August 24, 2011

The Bismarck Planning & Zoning Commission met on August 24, 2011, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Curt Juhala, Vernon Laning, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Ken Selzler was absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III and Charlie Whitman – City Attorney.

Others present were Bonnie Staiger – 419 East Brandon Drive, Doug Mahowald – 3407 Chisholm Trail, Marcia Kilzer – 1985 Mesquite Loop, Willard and Jeannette Harsch – 1969 Mesquite Loop, Jake Axtman – 909 Basin Avenue, Cary Schilling – 5017 Bruce Avenue, Edina, MN, Harvey Schilling – 3140 Winnipeg Drive, Ed and Sherleen McCarty – 858 Eastview Drive, Marc Eidahl – 1720 Burnt Boat Drive Suite 202 and George Yineman – 1283 Eagle Crest Loop.

MINUTES

Chairman Yeager called for consideration of the minutes of the July 27, 2011 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the July 27, 2011 meeting as received. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATIONS –
MAJOR PUD AMENDMENT – LOT 1, BLOCK 1, SCHILLING FIRST SUBDIVISION
ZONING ORDINANCE TEXT AMENDMENT – STORMWATER MANAGEMENT

Chairman Yeager called for consideration of the following consent agenda items:

- A. A Major PUD Amendment for Lot 1, Block 1, Schilling Frist Subdivision. The property is located along the north side of 43rd Avenue NE just east of US Highway 83 (1400 43rd Avenue NE). The PUD Amendment would allow the remaining western portion of the property to be developed with a five-story mixed use building.
- B. A zoning ordinance text amendment relating to the Stormwater Management. The proposed amendments would modify various provisions of the ordinance, including the

contents of a stormwater management plan, the approval process for stormwater management plans and stormwater permits and enforcement procedures.

MOTION: Based on the findings in the staff report, Commissioner Warford made a motion to approve Consent Agenda items A and B, calling for public hearings on the items. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

CONTINUED PUBLIC HEARING – SPECIAL USE PERMIT FOR LOT 2, BLOCK 1, COUNTRY WEST IV SECOND REPLAT (1720 BURNT BOAT DRIVE SUITE 204)

Chairman Yeager opened continued public hearing for a special use permit to allow the use of a conference room in a multi-tenant office building for a church. The property is located along the north side of Burnt Boat Drive between Tyler Parkway and Clairmont Road (1720 Burnt Boat Drive, Suite 204).

Mr. Greenquist provided an overview of the request and listed the following findings for the special use permit:

1. The proposed use is not completely consistent with the purpose and intent of the zoning ordinance and the master plan of the City of Bismarck.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed use may be detrimental to the use or development of adjacent properties. In particular, the operation of a church facility in a multi-tenant office building is not necessarily compatible with the office uses within the building.
4. The proposed use would not comply with all special regulations established by Section 14-03-08 of the City Code of Ordinances, and all special conditions necessary for the safety and welfare of the public. In particular, the number of off-street parking spaces required for a church (1 parking space per 60 square feet) exceeds the number of off-street parking spaces available under the office building usage (1 parking space per 250 square feet).

Mr. Greenquist then listed the following additional information:

1. A church is allowed in the RT district as a special use. Section 14-03-08 (4)(f) of the City Code of Ordinances outlines the requirements for a church. A copy of this section was attached to the staff report.
2. There are some concerns with parking for a church facility in a multi-tenant office building. The site plan submitted with the application shows 58 parking spaces for the building. While this may be adequate for the office uses, there are concerns that any church activities during typical office hours would strain the available parking. In

addition, parking is not allowed on the north side of Burnt Boat Drive adjacent to the property.

3. Because of an error in the legal description of this property in last month's public notice, July's public hearing on this item was continued.

Mr. Greenquist said that staff recommends approval of the special use permit for a church in a multi-tenant building on Lot 2, Block 1, Country West IV Second Replat (1720 Burnt Boat Drive Suite 204) with the following conditions:

1. Group gatherings are limited to Wednesday evenings after 6:00 p.m. and on Sundays.
2. Weddings, funerals, or other social events shall not be held at this location.
3. Group gatherings shall not exceed 36 persons at any time.
4. A columbarium will not be allowed at this location.

Marc Eidahl, the pastor of New Life Church, stated that he would like to address the parking concern that was raised at the last meeting. He said that parking lot is being resurfaced and a new parking plan is being developed; however, there will be sufficient parking for the church's needs. Mr. Eidahl requested that the restriction limiting group gatherings to Wednesday evenings after 6:00 p.m. be removed, because occasionally they do hold meetings and small prayer groups on other weekday evenings.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the request for a the special use permit for a church in a multi-tenant building on Lot 2, Block 1, Country West IV Second Replat (1720 Burnt Boat Drive Suite 204) with the following conditions: 1) Group gatherings are limited to evenings after 6:00 p.m. and on Sundays; 2) Weddings, funerals, or other social events shall not be held at this location; 3) Group gatherings shall not exceed 36 persons at any time; and 4) A columbarium will not be allowed at this location. Commissioner Juhala seconded the motion with Commissioners Armstrong, Atkinson, Juhala, Laning, Warford and Yeager voting in favor and Commissioners Bullinger and Waldoch voting against. The motion passed 6-2.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – PROMONTORY POINT IV ADDITON FIRST REPLAT

Chairman Yeager called for the public hearing for the minor subdivision final plat for Promontory Point IV Addition First Replat. The property is located in northwest Bismarck on the west side of Tyler Coulee between Mesquite Loop and the north end of Clairmont Road (a replat of Lots 1-18, Block 9 and Lots 1-24, Block 1, Promontory Point IV Addition in part of the E½ of the SW¼ of Section 19, T139N – R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. This replat does not change the roadway alignment and remains in conformance with the Fringe Area Road Master Plan which designates Valley Drive as a collector roadway.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision would remain compatible with adjacent land uses; a zoning change is not proposed. Adjacent land uses include residential, except for Tyler Coulee along the east edge.
5. There is currently only one access road serving the existing Promontory Point developments. Valley Drive will provide the second access and will be constructed prior to housing development in this subdivision.
6. A waiver was approved for the original plat to exceed the maximum block length due to topographic constraints.
7. The property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services.
8. The proposed subdivision would not adversely affect property in the vicinity.
9. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
10. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist said based on the above findings, staff recommends approval of minor subdivision final plat of Promontory Point IV Addition First Replat.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Promontory Point IV Addition First Replat.

Doug Mahowald stated that he is not against the development, but was wondering if the water pressure issue in the area will be addressed with this development. Commissioner Bullinger responded by saying the issue should be resolved this fall.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the minor subdivision final plat for Promontory Point IV Addition First Replat. Commissioner Armstrong seconded the motion and it was

unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – MIRIAM INDUSTRIAL PARK SECOND ADDITION FIRST REPLAT

Chairman Yeager called for the public hearing for the minor subdivision final plat for Miriam Industrial Second Addition First Replat. The property is located in east Bismarck, along the west side of Industrial Drive, approximately $\frac{3}{4}$ of a mile south of the I-94 interchange (a replat of the north 409.71 feet of Lot 17, Miriam Industrial Park Second Addition in part of the NE $\frac{1}{4}$ of Section 35, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision plat have been met.
2. The proposed subdivision is outside the boundaries of the Fringe Area Road Master Plan.
3. The storm water management plan has not been approved by the City Engineer.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developed industrial land to the south and north, partially-developed residential land separated by the CP Railway railroad line and the Hay Creek corridor to the west, Bismarck Expressway and undeveloped property to the east.
5. The property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then provided the following additional information:

1. The existing parcel has been administratively split through the City's lot modification process on two separate occasions resulting in a total of three parcels being created. As the creation of three parcels is the maximum allowed under the City's lot modification process, no additional lot splits would be allowed under the City's subdivision regulations. The property may only be subdivided further through the minor subdivision process.

2. The internal area will be accessed off of Industrial Drive via an existing private driveway easement for access and circulation; no additional right-of-way would be dedicated.

Mr. Tomanek said based on finding #3, staff recommends continuing the public hearing until such time as the storm water management plan has been approved by the City Engineer.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Miriam Industrial Second Addition First Replat.

There was no public comment.

MOTION: Based on the findings contained in the staff reports, Commissioner Warford made a motion to continue the public hearing for the minor subdivision final plat for Miriam Industrial Second Addition First Replat until the September 28, 2011 City Planning & Zoning Commission meeting. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM R5-RESIDENTIAL, RM5-RESIDENTIAL AND RM10-RESIDENTIAL TO R10-RESIDENTIAL – LOTS 1-3 AND 18-23, BLOCK 5, SHANNON VALLEY ADDITION

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, RM5-Residential and RM10-Residential zoning districts to the R10-Residential zoning district for Lots 1-3 and 18-23, Block 5, Shannon Valley Addition. The property is located along the east side of North 34th Street and the Chivas Place cul-de-sac between East Avenue C and Crocus Avenue.

Ms. Lee listed the following findings for the zoning change:

1. This area is outside of the area covered by the Land Use Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include single-family residential to the north, south, east and west.
3. The property is already annexed; therefore, the proposed zoning change will not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee distributed two letters and three emails in regards to the zoning change , attached as Exhibit A, Exhibit B and Exhibit C, Exhibit D and Exhibit E.

Ms. Lee said based on the above findings, staff recommends approval of the zoning change from the R5-Residential, RM5-Residential and RM10-Residential zoning districts to the R10-Residential zoning district on Lots 1-3 and 18-23, Block 5, Shannon Valley Addition.

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, RM5-Residential and RM10-Residential zoning districts to the R10-Residential zoning district on Lots 1-3 and 18-23, Block 5, Shannon Valley Addition.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the zoning change from the R5-Residential, RM5-Residential and RM10-Residential zoning districts to the R10-Residential zoning district on Lots 1-3 and 18-23, Block 5, Shannon Valley Addition. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:30 p.m. to meet again on September 28, 2011.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman

Greg Stites

From: Greg Stites [REDACTED]
Sent: Thursday, August 18, 2011 1:20 PM
To: 'cobplan@nd.gov'
Subject: City Planning & Zoning Commission

SENT VIA E-MAIL and FAX to 701-222-6450

August 18, 2011

Community Development Department
Planning Division
PO Box 5503
Bismarck, ND 58506-5503

Thank you for your letter dated August 12, 2011 regarding a public hearing on a zoning change on August 24, 2011, at 5 PM. Ronald & Martha Peltz and Richard Hammond have requested a zoning change to certain lots on the east side of 34th Street and on Chivas Place cul-de-sac south of Crocus Avenue just off of 35th Street.

We live at 3423 Crocus Avenue and our south property border abuts the empty lots located on Chivas Place.

We have no objections to the proposed zoning changes to the 3 lots along the east side of 34th Street just south of Crocus Avenue.

However, we are opposed to the proposed zoning changes for the empty lots on Chivas Place.

It is our understanding that 5 of the empty lots on Chivas Place are currently zoned R5-Residential with the 6th lot in the most southeastern location being an RM-5. An R5-Residential designation allows for single-family residential development only. It is our understanding that the proposal would change all of the empty lots on Chivas Place to R10-Residential which would allow both one and two-family residential development.

We are opposed to this zoning change because it would allow up to 10 families to occupy the 5 lots currently zoned for only single-family residential. And because of the extremely small size of the 6th lot currently zoned RM-5, it should actually be changed to an R5-Residential similar to the others on Chivas Place. All the empty lots on Chivas Place are completely surrounded by nicely built single-family residential homes. To change the zoning as proposed would diminish the property values of adjacent property owners unfairly. In building only single-family residences completely around Chivas Place, each of us has relied upon Chivas Place remaining R5-Residential.

The 6 empty lots available now are too crowded and too steep for even single-family residential development let alone two-family residential development.

If the owner(s) of these lots are interested in maximizing the potential for development, the owner(s) should consider re-platting the 6 lots into 2 R5-Residential lots whereby 2 single-family homes could be designed to occupy these steep and difficult lots upon which to build.

Thank you for our consideration.

Greg Stites
Nancy Guy
3423 Crocus Avenue
Bismarck, ND 58501

RECEIVED

AUG 22 2011

August 21, 2011

Community Development Department
Planning Division
PO Box 5503
Bismarck, ND 58506-5503

Responding to your letter of August 12, 2011 regarding a zoning change to Lots 1-3 and 18-23, Block 5, Shannon Valley. We live at 3407 Crocus Avenue next to the property at the corner of 34th and Crocus Avenue.

We strongly oppose the zoning change to R10-Residential-one and two-family Residential for the following reasons:

- Our property value and homes in the area would suffer. The original zoning is the zoning the immediate neighborhood expected when they chose to live here.
- We basically feel the lot facing 34th does not have adequate space to accommodate a Multi-family home without being too crowded and butting up to our property line. Even a single family home facing Crocus would have to be less in width to fit the pie shape lot.
- A new home is being built next to the corner lot and it would surprise us if the new owners would be in agreement to have the zoning changed to accommodate Multi-family homes on both sides of their home.
- The properties on Chivas Place are very narrow in the front, and would be better suited for 2 or 3 lots for single family homes. The values of the homes in that area would suffer if re-zoned to R10-Residential-one and two-family Residential.

Thank you for this opportunity to be heard.

Jeff Haas
Victoria Haas
3407 Crocus Avenue
Bismarck, ND 58501

EXHIBIT B

August 22, 2011

Community Development Department
Planning Division
PO Box 5503
Bismarck, ND 58501

Thank you for your letter dated August 12, 2011 regarding a public hearing on a zoning change on August 24, 2011, at 5 PM. Ronald & Martha Peltz and Richard Hammond have requested a zoning change to certain lots on the east side of the 34th Street and on Chivas Place cul-de-sac south of Crocus Avenue just off of 35th Street.

I live at 3430 Chivas Place and I live in the cul-de-sac where he wants to build.

We have no objections to the proposed zoning changes to the 3 lots along the east side of 34th street just south of Crocus Avenue.

However, we are opposed to the proposed zoning changes for the empty lots on Chivas Place.

It is our understanding that 5 of the empty lots on Chivas Place are currently zoned R5-Residential with the 6th lot in the most southeastern location being an RM-5. An R5-Residential designation allows for single-family residential development only. It is our understanding that the proposal would change all of the empty lots on Chivas Place to R10-Residential which would allow both one and two-family residential development.

We are opposed to this zoning change because it would allow up to 10 Families to occupy the 5 lots currently zoned for only single-family residential. And because of the extremely small size of the 6th lot currently zoned RM-5, it should actually be changed to and R%-Residential similar to the others on Chivas Place. All the empty lots on Chivas Place are completely surrounded by nicely built single-family residential homes. To change the zoning as proposed would diminish the property values of adjacent property owners unfairly. In building only single-family residence completely around Chivas Place, each of us has relied upon Chivas Place remaining R5-Residential.

The 6 empty lots available now are too crowded and too steep for even single-family residential development let alone two-family residential development.

If the owner(s) of these lots are interested in maximizing the potential for development, the owner(s) should consider re-platting the 6 lots into 2 R5-Residential lots whereby 2 single-family homes could be designed to occupy these steep and difficult lots upon which to build.

Thank you for our consideration

Robert and Heather Johnson
3430 Chivas Place
Bismarck ND 58501

EXHIBIT C

Kim Lee

From: Cobplan <cobplan@nd.gov>
Sent: Tuesday, August 23, 2011 10:44 AM
To: klee@nd.gov
Subject: FW: Proposed Zoning Change - Chivas Place and 34th Street

From: [REDACTED]
Sent: Monday, August 22, 2011 8:56 PM
To: cobplan@nd.gov
Cc: klee@nd.gov
Subject: Proposed Zoning Change - Chivas Place and 34th Street

August 22, 2011

Community Development Department
Planning Division
PO Box 5503
Bismarck, ND 58506-5503

This email is in response the letter dated August 12, 2011 regarding a public hearing on a zoning change to be held on August 24, 2011, at 5:00 pm. Ronald & Martha Peltz and Richard Hammond have requested a zoning change to specific lots on the east of 34th Street and on Chivas Place cul-de-sac south of Crocus Avenue just off of 35th Street. We will not be able to attend this meeting and therefore are responding via email our opinion to the proposed zoning changes.

We reside at 3429 Crocus Avenue and our south property border is directly located next to the empty lots on Chivas Place on the east side of 34th Street just south of Crocus Ave.

After evaluating the requested changes, we have no objections to the proposed zoning changes for the 3 lots along the east side of 34th Street just south of Crocus Ave. However, we are *opposed* to the proposed zoning changes for the empty lots located on Chivas Place.

We are opposed to this zoning change because it would allow up to 10 families to occupy the 5 lots currently zoned for only single-family residential. To change the zoning as proposed would diminish the property values of adjacent property owners which we feel is unfair when all other homes in the area are single-family residences.

To summarize, we have no objection to the requested zoning change for the 3 lots located along 34th Street, *but are opposed to the zoning request change for the 6 lots located on Chivas Place.*

Thank you for your time and consideration.

Larry and Christine Fitterer
3429 Crocus Ave
Bismarck, ND 58501

Kim Lee

Subject: FW: zone change request/concern

From: Carol Hendrickson [mailto:]

Sent: Tuesday, August 23, 2011 4:56 PM

To: klee@nd.gov

Subject: zone change request/concern

We live at 3435 Crocus Avenue, Bismarck ND, and would like to voice our concern on changing the zoning on some of the lots in our neighborhood to R10. We would like to see the lots on Crocus Avenue and Chivas Place zoned as R5, as this is how the rest of our neighborhood has been developed.

Thank you for considering our recommendation,
Keith & Carol Hendrickson