

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
October 26, 2011**

The Bismarck Planning & Zoning Commission met on October 26, 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, Mel Bullinger, Curt Juhala, Doug Lee, Ken Selzler, Mike Schwartz, John Warford and Wayne Yeager.

Commissioners Tom Atkinson, Vernon Laning and Lisa Waldoch were 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, Charlie Whitman – City Attorney, Ray Ziegler – Building Official, Linda Oster – Project Engineer and Colleen Peterson – Stormwater Program Coordinator.

Others present were Loran Galpin – 501 East Main Avenue, Jake Axtman – 909 Basin Avenue, Katie Oakland – 6400 Copper Ridge Way, Pat & David Schwartz – 106 West Avenue B and Clarence and Radie Clayton – 3224 East Avenue C.

MINUTES

Chairman Yeager called for consideration of the minutes of the September 28, 2011 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the September 28, 2011 meeting as received. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Schwartz, Warford and Yeager voting in favor of the motion.

INTRODUCTION OF COMMISSIONER DOUG LEE

Chairman Yeager introduced Doug Lee, a new Commissioner representing the City.

CONSIDERATIONS –

**ZONING CHANGE – LOTS 3 & 4, LESS THE 80.63 FEET OF LOT 4, BLOCK 1,
EASTDALE ADDITION**

ZONING CHANGE – LOTS 1-4, BLOCK 2, SHANNON VALLEY FOURTH ADDITION

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

- A. A zoning change from the RT-Residential zoning district to the CA-Commercial zoning district for Lots 3 & 4, less the East 80.63 feet of Lot 4, Block 1, Eastdale Addition. The property is part of two lots in one block on 16,379 square feet, located in east Bismarck, along the north side of East Rosser Avenue just east of North 26th Street.

- B. A zoning change from the RM15-Residential zoning district to the R10-Residential zoning district for Lots 1-4, Block 2, Shannon Valley 4th Addition (property being replatted as Lots 1-8, Block 1, Shannon Valley 4th Addition First Replat). The property is four lots in one block on 1.33 acres, located along the west side of North 35th Street between Baltus Drive and Shannon Drive.

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

PUBLIC HEARING – ZONING CHANGE FROM R10-RESIDENTIAL TO CG-COMMERCIAL – LOTS 4 & 5, BLOCK 6, STONECREST SECOND ADDITON

Chairman Yeager called for the public hearing for the zoning change from the R10-Residential zoning district to the CG-Commercial zoning district for Lots 4 & 5, Block 6, Stonecrest Second Addition. The property is located In northeast Bismarck, less than ½ mile north of Century Avenue on the west side of Centennial Avenue.

Mr. Greenquist listed the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as general commercial west of Centennial Road (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change is compatible with adjacent land uses and would not adversely affect property in the vicinity. Adjacent land uses include a church on a CG lot to the south; undeveloped CG and RM30 lots to the north; an undeveloped R10 lot to west, and undeveloped MA land to the east, across Centennial Road.
3. The subdivision proposed for this property has already been annexed; therefore, the zoning change will not place an undue burden on public services and facilities.
4. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist said this request is to rezone the two lots that were inadvertently left out of the earlier zoning change on this plat. He then distributed two emails in regards to the zoning change, attached as Exhibit A and Exhibit B.

Mr. Greenquist said based on the above findings, staff recommends approval of the zoning change from the R10-Residential zoning district to the CG-Commercial zoning district for Lots 4 & 5, Block 6, Stonecrest Second Addition.

Chairman Yeager called for the public hearing for the zoning change from the R10-Residential zoning district to the CG-Commercial zoning district for Lots 4 & 5, Block 6, Stonecrest Second Addition.

Clarence Clayton said that he attends Capital Christian Center that is adjacent the proposed zoning change. He stated that the proposed zoning would not be compatible with the existing zoning and it would negatively affect the financial future of this area. He also expressed his concern with the potential for a bar on this property.

Mr. Greenquist noted that there is a regulation for taverns that requires a minimum setback of 300 feet setback from the property line of a church, so the lots would not be allowed to have a bar on them.

Commissioner Warford said the zoning district directly across Centennial Road is MA-Industrial, and then asked what types of uses are allowed in that district. Mr. Greenquist responded by saying that light industrial uses are allowed.

Todd Freitag indicated that he also attends Capital Christian Center and his concern is for the children that attend the preschool and after school programs located at the church and their safety.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Selzler made a motion to approve the zoning change from the R10-Residential zoning district to the CG-Commercial zoning district for Lots 4 & 5, Block 6, Stonecrest Second Addition. Commissioner Lee seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Schwartz, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MAJOR PUD-PLANNED UNIT DEVELOPMENT AMENDMENT – LOT 7, BLOCK 11, NORTHERN PACIFIC ADDITION

Chairman Yeager called for the public hearing for the Major PUD-Planned Unit Development Amendment for Lot 7, Block 11, Northern Pacific Addition. The property is located along the east side of North 3rd Street between East Avenue B and East Avenue C (613 North 3rd Street). The PUD Amendment would allow a salon, offices, apartments and a day care.

Mr. Tomanek provided an overview of the request and listed the following findings for the PUD-Planned Unit Development Amendment:

1. The proposed PUD amendment would be compatible with adjacent land uses. Adjacent land uses include a mix of owner-occupied single-family dwellings, multi-family dwellings and the historic governors' mansion to the south east.
2. The proposed PUD amendment would not place an undue burden on public services. In particular, the installation of directional signage and signage prohibiting right turn traffic

movements during specific times of the day, re-striping the off-street parking area to accommodate diagonal parking and direct traffic movements and the removal of the existing shrub adjacent to the proposed egress driveway, would mitigate negative impacts on 3rd Street traffic operations

3. The proposed amendment would not adversely affect property in the vicinity. In particular, the City Traffic Engineer previous concerns regarding the traffic operations during peak commute times would be mitigated by the above-listed site improvements.
4. The proposed amendment is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed amendment is consistent with all adopted plans, policies and accepted planning practice.

Mr. Tomanek then listed the following additional information:

1. Section 14-04-18 of the Bismarck Code of Ordinances (Zoning) indicates that the intent of the City's Planned Unit Development district is "to encourage flexibility in development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provision of streets and utilities; and to preserve the natural and scenic features of open space."
2. The property was originally zoned as a PUD in April 1987. The allowable uses included a salon, offices and apartments. The PUD was amended in 2001 to include a craft & gift sales as an allowable use. The salon was recently closed by its owners. The building owner/applicant has requested an amendment to the PUD to allow a day care facility.
3. Currently the applicant also owns the adjacent parcel to the south (611 North 3rd Street which is legally described as the north 50 feet of Lot 6, Block 11, Northern Pacific Addition) as a different entity. The property was acquired in 2002 to help accommodate additional parking demands. The lot to the south is primarily vacant; the only structure is a three-stall garage available for parking and storage. The partially developed lot was not included with the initial PUD and is not included in this request; however, the applicant has indicated that the off-street parking available on the adjacent lot would be utilized to support additional off-street parking needs for the building at 613 North 3rd Street. Planning staff has expressed a desire for the two lots to be combined as one parcel for the purpose of ensuring adequate parking would accompany the uses in the building located at 613 North 3rd Street. The applicant has indicated that the combination of the two separate lots could be accomplished pending a favorable outcome of his request to amend the PUD to allow a day care facility within the existing building.
4. The day care facility is intended to accommodate up to 58 children ranging in age from 0-12 years and 10 staff members. Based on this information provided with the application, 11 off-street parking spaces are required for the day care facility. Additionally, there shall be three off-street parking spaces provided for the apartments. Currently Lot 7 provides 17

parking spaces. With the additional parking available on the lot adjacent to the south, a total of 25 spaces would be provided.

5. Section 14-03-08(4)(r) of the City Code of Ordinances lists the requirements for a day care facility as a special use permit in any zoning district. A special use permit is not listed as an allowable use in a PUD zoning district; therefore, it is reasonable to ensure that a daycare facility in a PUD zoning district would meet the same requirements as a day care use in a different zoning district. The following five conditions would need to be satisfied: 1) Each building shall provide not less than thirty-five (35) square feet of interior recreation area per client. Work areas, office areas, and other areas not designed for use of the clients may not be counted in this computation; 2) Each lot shall provide an outdoor recreation area of not less than forty (40) square feet per client. The recreation area shall be fenced and located behind the building setback lines. Recreation areas shall be required only for those clients under twelve (12) years of age; 3) Adequate off street parking shall be provided at the following ratio: One space for each two employees and one space for each ten (10) clients; 4) Every sleeping room shall have at least one openable window or door approved for emergency escape or rescue; and 5) Day care centers shall conform to the Uniform Building Code and The Uniform Fire Codes which have been adopted by the City of Bismarck.

6. The City Traffic Engineer has expressed a concern with the proposed use of the property as a day care facility. The Traffic Engineer has stated that there is the potential for significant traffic impacts to 3rd Street traffic flow and the intersection of 3rd Street and Avenue C. 3rd Street is functionally classified a collector route and carries large volumes of traffic during AM and PM commute times. This facility is located south of the signalized intersection of 3rd Street and Avenue C with the northernmost driveway being located approximately 70 feet south of the intersection. This area is within the operational area of the intersection and will typically be inaccessible to southbound traffic during peak hours due to traffic stacking. There is an additional concern relating to the existing narrow driveways accessing this property and the ability of two motorists to utilize the driveways simultaneously. The Traffic Engineer and the applicant have discussed improvements to the property that would ameliorate the above-listed concerns. The improvements include new paint markings in the parking area to accommodate diagonal parking spaces and yellow arrows indicating the direction of traffic flow; a one-way traffic circulation pattern that would have traffic enter the site at the southernmost driveway and exist the property by utilizing the northernmost driveway; installing permanent signage throughout the property that indicates the appropriate ingress and egress to the off-street parking area and "Right Turn Only" signs displaying the time times 7:30 AM to 8:30 AM and 4:30 PM to 5:30 PM; and the removal of an existing shrub located adjacent to the northernmost driveway to aid in visibility as motorists exit the property.

Mr. Tomanek said based on the above findings, staff recommends approval of the Major PUD Amendment for Lot 7, Block 11, Northern Pacific Addition, as outlined in the PUD Amendment, which includes the following provisions to address the required traffic safety improvements:

1. New paint markings in the parking area to accommodate diagonal parking spaces.

2. Painted yellow arrows indicating the direction of traffic flow throughout the parking area.
3. A one-way traffic circulation pattern that would have traffic enter the site at the southernmost driveway and exit the property by utilizing the northernmost driveway.
4. Permanent signage is installed throughout the property that indicates the appropriate ingress and egress to the off-street parking area and "Right Turn Only" signs displaying the time times "7:30 AM to 8:30 AM" and "4:30 PM to 5:30 PM".
5. The existing shrub located adjacent to the northernmost driveway is removed.
6. The above listed conditions are satisfied prior to the operation of the day care facility.

Commissioner Armstrong inquired whether or not day care facilities are required to have the outside play area be in a location where traffic cannot flow through the area the children have to cross to get to the play area. Mr. Tomanek answered by saying that the code does not list a requirement where outside play space is located, just that a certain amount of square feet are required for each child. Mr. Ziegler added that typically the licensing requirement, the children will always be accompanied by at least one staff member at all times.

Chairman Yeager called for the public hearing for the Major PUD amendment for Lot 7, Block 11, Northern Pacific Addition.

No comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Warford made a motion to approve the Lot 7, Block 11, Northern Pacific Addition, as outlined in the PUD Amendment, which includes the following provisions to address the required traffic safety improvements: 1) New paint markings in the parking area to accommodate diagonal parking spaces; 2) Painted yellow arrows indicating the direction of traffic flow throughout the parking area; 3) A one-way traffic circulation pattern that would have traffic enter the site at the southernmost driveway and exit the property by utilizing the northernmost driveway; 4) Permanent signage is installed throughout the property that indicates the appropriate ingress and egress to the off-street parking area and "Right Turn Only" signs displaying the time times "7:30 AM to 8:30 AM" and "4:30 PM to 5:30 PM"; 5) The existing shrub located adjacent to the northernmost driveway is removed; and 6) The above listed conditions are satisfied prior to the operation of the day care facility. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Schwartz, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – PARKING REGULATIONS/STACKING

Chairman Yeager called for the public hearing for the zoning ordinance text amendment relative to Parking Regulations/Stacking.

Ms. Lee provided an overview of the zoning ordinance text amendment for Parking Regulations/Stacking. The proposed amendments would specify off-street vehicle stacking requirements for drive-through facilities for various types of uses.

Ms. Lee said staff recommends approval of the zoning ordinance text amendment for Parking Regulations/Stacking, as presented.

Chairman Yeager opened the public hearing for the zoning ordinance text amendment relative to Parking Regulations/Stacking.

There was no public comment.

Chairman Yeager closed the public hearing.

MOTION: Commissioner Lee made a motion to approve the zoning ordinance text amendment relative to Parking Regulations/Stacking. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Schwartz, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – STORMWATER MANAGEMENT (TITLE 14.1)

Chairman Yeager called for the public hearing for the zoning ordinance text amendment relative to Stormwater Management (Title 14.1).

Ms. Lee provided an overview of the zoning ordinance text amendment for Stormwater Management (Title 14.1). The proposed amendment 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. Ms. Lee added that the original ordinance was approved in 1997 and this would be the first major revision to the ordinance since that time. Staff has been working on the ordinance since last winter and the changes are being initiated in part to comply with new requirements of the Clean Water Act. She added that changes have also been made regarding the application of the ordinance within the extraterritorial area, with written concurrence of the County Engineer being required prior to approval of a stormwater management plan or a stormwater permit. Informational meetings were held with consulting engineers on October 17th and with the Bismarck-Mandan Homebuilders Association on October 20th. Minor modifications to the ordinance were made in response to comments received at those meeting.

Ms. Lee said staff recommends approval of the zoning ordinance text amendment for Stormwater Management (Title 14.1) as presented.

Chairman Yeager opened the public hearing for the zoning ordinance text amendment relative to Stormwater Management (Title 14.1).

There was no public comment.

Chairman Yeager closed the public hearing.

MOTION: Commissioner Armstrong made a motion to approve the zoning ordinance text amendment relative to Stormwater Management (Title 14.1). Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Schwartz, 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 5:39 p.m. to meet again on November 16, 2011.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman

From: Clarence Clayton

Sent: Monday, October 24, 2011 11:20 PM

To: cobplan@nd.gov

Subject: Written Comment on Zoning Change for Lots 4-5, Block 6, Stonecrest Second Addition

City Planning & Zoning Commission

Dear Commission Members,

We would like to submit a written comment concerning the "Zoning Change" for the Lots 4-5, Block 6, Stonecrest Second Addition. The existing zoning allows the major uses: R10-Residential--Single and two family residential. We would like this zoning designation to remain as R10-Residential---Single and two family residential.

We attend the Capital Christian Center (church) adjacent to this identified piece of property. We feel that any development/construction that would be considered a major use under the proposed zoning change (CG-Commercial--Multi-family dwellings, offices, taverns, wholesale and heavy commercial) WOULD NOT be compatible with the existing residential community and lifestyles. Structures that are possible under the proposed zoning change would affect the financial future (negatively) for the area.

Thank you for the opportunity to provide comments on the proposed zoning change.

Clarence & Radie Clayton

3224 E. Ave. C.

Bismarck, North Dakota

From: Gayle Schuck
Sent: Monday, October 24, 2011 7:11 PM
To: Community Development Dept.
Subject: Zoning Stonecrest

To Gregg Greenquist and the City Planning & Zoning Commission,

This letter concerns Stonecrest Second Addition and the potential zoning change from Residential to Commercial, which is being discussed at the Commission meeting at 5 p.m., Oct. 26.

Please restrict the zoning to residences and offices. There are many young families living nearby and the property now being developed will likely house many more. Please keep the neighborhood free of taverns, and wholesale and heavy commercial businesses.

As members of Capital Christian Center, we'd like to see a healthy environment, which would not be fostered by taverns; we'd also like to see a safe neighborhood without more heavy equipment and truck traffic. Our hope in building a church on the corner of Centennial Road and Jericho Road was to be part of a family neighborhood.

Stonecrest can be a neighborhood where people are proud to live or where trouble brews. Zoning decisions will have a big effect on the future of this area. Please restrict the zoning.

Thank you for your thoughtful consideration.

Gayle and Larry Schuck