

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
May 26, 2010**

The Bismarck Planning & Zoning Commission met on May 26, 2010, 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, Jo Conmy, Jack Hegedus, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Curt Juhala was absent.

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

Others present were Kurt Chaffee – 3200 North 11th Street, Linda Betzloft – 3706 Augusta Way and Dave Patience – 909 Basin Avenue.

MINUTES

Chairman Yeager called for consideration of the minutes of the April 28, 2010 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the April 28, 2010 meeting as received. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATION – ZONING CHANGE FROM A-AGRICULTURAL TO RR-RESIDENTIAL – LOT A OF THE NE1/4 OF SECTION 2, T139N-R80W/HAY CREEK TOWNSHIP

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

A zoning change from A-Agricultural zoning district to RR-Residential zoning district for Lot A of the NE1/4 of Section 2, T139N-R80W/Hay Creek Township. The property is 1 lot on 5 acres located 1-3/4 miles east of US Hwy 83 on the south side of 84th Avenue NE, along the west side of Arcada Drive (in the NE¼ of Section 2, T139N-R80W/ Hay Creek Township).

MOTION: Commissioner Hegedus made a motion to approve the consent agenda. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – EDGEWOOD VILLAGE FIRST ADDITION FIRST REPLAT

Chairman Yeager called for the public hearing for the minor subdivision final plat for Edgewood Village First Addition First Replat. The property is located east of 19th Street North along the north side of Calgary Avenue (replat of Lots A-F of Lots 46-49, Block 2, Edgewood First Addition in the NW1/4 of Section 22, T139N-R80W/Hay Creek Township).

Ms. Lee 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. A waiver from the storm water management plan requirement has been granted by the City Engineer.
3. The proposed subdivision is compatible with adjacent land uses. Adjacent land uses include developing R10-zoned property to the north, east and west and developing R5-zoned property to the south across Calgary Avenue.
4. The proposed subdivision is already annexed and utilities are in place in Calgary Avenue.
5. The proposed subdivision would not adversely affect property in the vicinity.
6. The proposed subdivision is consistent with the general intent and purpose of the subdivision regulations.
7. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the above findings, staff recommends approval of the minor subdivision final plat for Edgewood Village First Addition First Replat, with the understanding that a notice for driveway locations be added to the face of the plat indicating “the maximum driveway width allowed shall be 24 feet, excluding flares of the driveway, and driveways shall not be placed side-by-side unless necessary because of terrain”. She added that the applicant is concerned with the language of the recommended plat note and would prefer that the standard plat note for driveways be used.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Edgewood Village First Addition First Replat.

Dave Patience with Swenson, Hagen & Co said that the developer originally spoke with the City Traffic Engineer and there were no issues with the proposed plan, so the developer purchased the property and is confused why the issues with the driveways came up later. Mr. Patience stated that the developer is concerned because two driveways must be side by side and show up in the plan that way. He went on to say that he told the developer that when this happens there is a note

on the face of the plat that reads “the driveways are subject to approval by the office of the City Engineer” and that is the preferred language.

Linda Retzloft said she lives on the corner of Calgary Avenue and 19th Street and is concerned about her property value and wants to know what the cottages will be valued at. Mr. Patience responded by saying the plan proposes six single family units, so they should be valued around the same as the other properties in the area.

Chairman Yeager closed the public hearing.

Commissioner Warford would like to know staff’s thoughts on the wording on the face of the plat proposed by Mr. Patience. Ms. Lee answered by saying the language included in the staff report was approved by the City Traffic Engineer, however, before the plat is presented to the Board of City Commissioners, the language can be reviewed again.

Commissioner Bullinger commented that the reason the language is worded the way it is, is because there is a concern during the winter and snow plowing season. The Engineering Department wants to ensure there is enough room to deposit all the snow and it can become difficult when there are too many back to back driveways. Commissioner Bullinger concluded by saying the Traffic Engineer should not have a problem with the two proposed driveways in the plan and the language proposed by Mr. Patience on the plat.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the minor subdivision final plat for Edgewood Village First Addition First Replat, with the understanding that the standard plat note for driveway locations be added to the face of the plat (the location and width of driveways on Calgary Avenue shall be as approved by the City Engineer during the site plan approval process). Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 1 & 2 AND THE WEST 40 FEET OF VACATED 11TH STREET ADJACENT TO LOT 1, BLOCK 4, CENTURY COMMERCIAL PARK

Chairman Yeager called for the public hearing for special use permit to allow a day care facility for Lots 1 & 2 and the west 40 feet of the vacated 11th Street right-of-way adjacent to Lot 1, Block 4, Century Commercial Park. The property is located at 3200 11th Street North along the north side of Weiss Avenue just east of 10th Street North (Lots 1 & 2 and the west 40 feet of the vacated 11th Street right-of-way adjacent to Lot 1, Block 4, Century Commercial Park).

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

1. The proposed special use complies with all applicable provision of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.

2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic, in particular, on-street parking is limited to Sundays only.

Mr. Tomanek also provided the following additional information:

1. The day care is intended accommodate 30-40 children ranging in age from 0-12 years.
2. The applicants have been working with the Building Official to satisfy all the requirements necessary to meet the guidelines set forth to establish and operate a day care facility, in particular the appropriate accommodations have been met to allow for adequate outdoor play space for the children.
3. The City Traffic Engineer has expressed concerns over the proposed use, citing the additional traffic volumes in an already congested area may exacerbate the current situation.
4. Section 14-03-08(4)(r) of the City Code of Ordinances outlines the requirements for a day care center. A copy of this section of the City Code is attached.

Mr. Tomanek then read the letter received from Menard, Inc. attached as Exhibit A.

Mr. Tomanek said that based on the above findings, staff recommends approval of the special use permit to allow the operation of a day care facility on Lots 1 & 2 and the west 40 feet of the vacated 11th Street right-of-way adjacent to Lot 1, Block 4, Century Commercial Park, with the following conditions: 1) occupancy of the facility shall generally conform with the site configuration submitted with the application; and 2) the number of clients shall be limited to no more than 50, with the understanding that any increase over 50 shall require an amendment to the special use permit.

Commissioner Armstrong asked if there are signs on the street that say “no parking except on Sundays?” Mr. Tomanek answered by saying yes.

Commissioner Hegedus inquired if there is adequate room for the unloading and loading of the children. Mr. Tomanek said the flow of traffic will be to enter the parking lot from Weiss Avenue and the parking lot is structured to create a circular flow of traffic. Mr. Chaffee from New Song Church, stated that the only doors to the day care are located in the parking lot right off of Weiss Avenue.

Commissioner Bullinger asked if the parking is adequate when there are other church functions. Mr. Chaffee answered by saying the day care will always have priority over all other church functions.

Commissioner Bullinger asked how the day care plans to accommodate 30-40 children when each child requires 40 square feet of outdoor recreation area. Mr. Tomanek said, according to the Building Official and Burleigh County Social Services, the way to accommodate undersized outdoor recreational areas, is to have the children go outdoors in different shifts.

Chairman Yeager opened the public hearing for the Lots 1 & 2 and the west 40 feet of the vacated 11th Street right-of-way adjacent to Lot 1, Block 4, Century Commercial Park special use permit.

No public comment as received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the special use permit for a day care facility on Lots 1 & 2 and the west 40 feet of the vacated 11th Street right-of-way adjacent to Lot 1, Block 4, Century Commercial Park, with the following conditions: 1) Occupancy of the facility shall generally conform with the site configuration submitted with the application; and 2) The number of clients shall be limited to no more than 50, with the understanding that any increase over 50 shall require an amendment to the special use permit. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOT 5, BLOCK 3, GOLDEN HEIGHTS SUBDIVISION

Chairman Yeager called for the public hearing for special use permit to move a house previously occupied at another location to Lot 5, Block 3, Golden Heights Subdivision (7613 Viking Drive). The property is located in Golden Heights Subdivision, a lot on the south side of Viking Drive between Barston Lane and 80th Street SE.

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

1. The proposed house relocation would meet the provisions of 14-03-08(3)(r) of the City Code of Ordinances (see attachment).
2. The proposed house relocation is a permitted use and complies with all requirements of the RR – Residential zoning district.
3. Conformance with the building code would be met prior to issuance of the certificate of occupancy (see attached letter).
4. The house to be moved and proposed use of the property would be compatible with the neighborhood.
5. The request is compatible with adopted plans, policies and accepted planning practice.

Mr. Greenquist said that based on the above findings staff recommends approval of the Special Use Permit to allow a move of a house previously occupied at another location to Lot 5, Block 3, Golden Heights Subdivision (7613 Viking Drive).

Chairman Yeager opened the public hearing for the Lot 5, Block 3, Golden Heights Subdivision special use permit.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the special use permit to move a house previously occupied at another location to Lot 5, Block 3, Golden Heights Subdivision. Commissioner Waldoch seconded the motion with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

Ms. Lee stated that the proposed floodplain ordinance is still being reviewed. On May 13, 2010 a public input meeting was held for residents, home builders, contractors and developers who would be impacted by the proposed changes to the ordinance. Ms. Lee said some residents at the meeting were in favor of increasing the elevation on fill from one foot to two foot above the base flood elevation. Others were concerned about how the proposed changes would impact partially developed subdivisions and also the impact on the National Flood Insurance Program. Burleigh County Water Resource District also had some comments regarding applicability of the floodplain regulations to properties that were removed from the floodplain with a Letter of Map

Revision Based on Fill (LOMR(f)). Ms. Lee concluded by saying the proposed ordinance should be presented at the public hearing in June.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:36 p.m. to meet again on June 23, 2010.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman

MENARD, INC.

May 21, 2010

VIA E-MAIL & U.S. MAIL
COBPLAN@ND.GOV

Bismarck-Burleigh County Community Development Department
City Planning & Zoning Commission of Bismarck, North Dakota
Attn: Jason Tomanek
221 North 5th Street
PO Box 5503
Bismarck, ND 58506-5503

Dear City Planning and Zoning Commission Members:

Menard, Inc. is in receipt of a notice regarding a special use permit being requested by New Song Church for a daycare center on Lots-1-2 and the West 40' of Vacated 11th Street Adjacent to Lot 1, Block 4, Century Commercial Park (3200 North 11th Street). The property is located at the intersection of North 11th Street and Weiss Avenue, north of Century Avenue and west of State Street.

While Menard, Inc. would like to make it clear that it favors the growth, prosperity and development of the City of Bismarck, Menard does hold some reservations and concerns regarding the property in question being used for the purpose of a daycare. The operation of the Menards store, like similar large retail establishments, generates a certain level of noise, traffic and lights. Menard, Inc. encourages each of you to consider these factors during your review of the pending request. In the event you deem it appropriate to approve the request, Menards would like it clearly understood that, based upon our prior development in the area and our notice given in the form of this letter, no objections should be made to Menard, Inc. by the City, New Song Church, or the future owners of the daycare facility for any of these foreseeable issues that may result from being placed in close proximity to the existing commercial properties.

Menard, Inc. respectfully requests that the proposal before the committee be considered with the above-mentioned concerns in mind and conditioned on the understanding by all parties that any daycare facility shall in no way impair the future operation of the Menards home improvement store or the future development of its commercial property in the area.

Please include this letter as part of the official public hearing transcript of the May 26, 2010 hearing. Thank you for your time and consideration.

Sincerely,
Menard, Inc.



Devin Dregne

Corporate Counsel
Menard, Inc.

5101 Menard Drive

Eau Claire, WI 54703

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Exhibit A