

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
July 28, 2021**

The Bismarck Planning & Zoning Commission met on July 28, 2021, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Steve Bakken, Brian Bitner, Cole Johnson, Vernon Laning, Paul Levchak, Kevin Martin, Gabe Schell, Mike Schwartz, Wendy Van Duynes and Paul Zent.

Commissioner Trent Wangen was absent.

Staff members present were Hilary Balzum – Community Development Senior Administrative Assistant, Janelle Combs – City Attorney, Ben Ehreth – Community Development Director, Will Hutchings – Planner, Kim Lee – Planning Manager and Daniel Nairn – Senior Planner.

MINUTES

Chair Schwartz called for consideration of the minutes of the June 23, 2021 meeting.

MOTION: Commissioner Bakken made a motion to approve the minutes of the June 23, 2021 meeting, as presented. Commissioner Zent seconded the motion and it was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz and Zent voting in favor of the motion.

CONSIDERATION

- 2. FROHLICH ADDITION – PRELIMINARY PLAT**
- 3. HUGHES ADDITION – PUD AMENDMENT**

MOTION: Based on the findings contained in the staff reports, Commissioner Bitner made a motion to approve consent agenda items 2 and 3, granting tentative approval or calling for a public hearing on the items as recommended by staff. Commissioner Bakken seconded the motion and it was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Wangen and Zent voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT
TREE TOP ADDITION**

Chair Schwartz called for the public hearing on the minor subdivision final plat for Tree Top Addition. The proposed plat is three lots in one block on 3.54 acres and is located in north Bismarck, west of US Highway 83/State Street and north of East LaSalle Drive, along the north side of Canada Avenue (a replat of Lot 2, Block 2, Tree Top Addition and the north half of Canada Avenue right-of-way).

Mr. Nairn gave an overview of the request, including the following findings related to land use for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP).
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Mr. Nairn explained that upon further discussion after the staff report was prepared and the agenda packet distributed, it was decided that approval of a Private Drive and Utility Agreement with the City by the Board of City Commissioners would not be needed and staff would like to remove that portion of their recommendation at this time.

Mr. Nairn said based on these findings, staff recommends approval of the minor subdivision final plat for Tree Top Addition First Replat.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson, Hagen & Co., said the property is looking to be split for further development and, based on the current parking ordinance, there would be ample space to build in accordance with the CG-Commercial zoning district allowances.

Commissioner Levchak asked if the parking for the new lots would be what is there for the current restaurant now.

Mr. Niemiller replied a portion would be but there would likely be a cross parking agreement and they would have enough on-site parking also as it is now.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Commissioner Bakken made a motion to recommend approval of the minor subdivision final plat for Tree Top Addition First Replat. Commissioner Bitner seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz and Zent voting in favor of the motion.

PUBLIC HEARINGS – MINOR SUBDIVISION FINAL PLAT AND SPECIAL USE PERMIT MENARDS ADDITION FIRST REPLAT

Chair Schwartz called for the public hearings on the minor subdivision final plat for Menards Addition First Replat and a special use permit for a drive-through to be located on Lot 2, Block 1, Menards Addition First Replat. The proposed plat is two lots in one block on 1.38 acres and is located in north Bismarck, north of Century Avenue and west of State Street, along the south and east side of Weiss Avenue (a replat of part of Lot 1, Block 2, Menards Addition).

Mr. Hutchings gave an overview of the requests, including the following findings related to land use for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP).
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Mr. Hutchings then gave the following findings related to land use for the special use permit:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use is compatible with adjacent land uses and zoning.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.
4. Adequate public facilities and services are in place or would be provided at the time of development.
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic.
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Mr. Hutchings said based on these findings, staff recommends approval of the minor subdivision final plat for Menards Addition First Replat and approval of the special use permit to allow a drive-in/drive-through in conjunction with a coffee shop on Lot 2, Block 1, Menards Addition First Replat with the following conditions:

1. The minor subdivision final plat for Menards Addition First Replat will not be forwarded to City Commission until the applicant provides verification of the ability to connect to the private sanitary sewer or another suitable connection is found.

2. The site plan submitted must generally conform the site plan submitted for the special use permit.
3. The existing ATM on the southernmost drive-through bay of the financial institution on Lot 1, Block 1, Menards Addition First Replat must be removed or relocated prior to approval of the site plan.
4. Adequate signage must be provided to clearly denote the stacking spaces and queuing lane for the proposed coffeeshop within Lot 2, Block 1, Menards Addition First Replat.

Commissioner Levchak asked if the location would offer indoor seating. Mr. Hutchings said it would not and would be exclusively a drive-through.

Commissioner Levchak asked what the three adjacent parking spaces are intended for. Mr. Hutchings said they would likely be utilized as employee parking.

Mr. Niemiller said the parking would be cross-access in order to have bank and coffee shop parking on both sides and they are continuing to work through the sanitary-sewer needs of the additional lot as well.

Commissioner Zent asked if the parking lot striping is the only delineation from the credit union and the proposed coffee shop.

Mr. Niemiller replied that is correct and added the access would be detached from the right-of-way, but there would be one access point.

Commissioner Schell asked what the plan is for the credit union sign. Mr. Niemiller said it would need to be relocated to work within the lots and will address that during the site plan review process.

Chair Schwartz opened the public hearing.

Comments on the requests are attached as Exhibit A.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Commissioner Bakken made a motion to recommend approval of the minor subdivision final plat for Menards Addition First Replat and approval of the special use permit to allow a drive-in/drive-through in conjunction with a coffee shop on Lot 2, Block 1, Menards Addition First Replat with the following conditions: 1) The minor subdivision final plat for Menards Addition First Replat will not be forwarded to City Commission until the applicant provides verification of the ability to connect to the private sanitary sewer or another suitable connection is found; 2) The site plan submitted must generally conform the site plan submitted for the special use permit; 3) The existing ATM on the southernmost drive-through bay of the financial institution on Lot 1, Block 1, Menards Addition First Replat must be removed or relocated prior to approval of the site plan; and 4) Adequate signage must be provided to clearly denote the stacking spaces and queuing lane for the proposed coffeeshop within Lot 2, Block 1, Menards Addition First Replat. Commissioner

Levchak seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz and Zent voting in favor of the motion.

**PUBLIC HEARING - SPECIAL USE PERMIT (DRIVE-THROUGH)
LOT 1, BLOCK 1, MEMORY THIRD ADDITION**

Chair Schwartz called for the public hearing on a special use permit to allow a drive-in/drive-through in conjunction with a fast food restaurant on Lot 1, Block 1, Memory Third Addition. The property is located in north Bismarck, along the east side of US Highway 83/State Street and the south side of Brookside Lane.

Mr. Hutchings gave an overview of the request, including the following findings related to land use:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use is compatible with adjacent land uses and zoning.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.
4. Adequate public facilities and services are in place or would be provided at the time of development.
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic.
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Mr. Hutchings said, based on these findings, staff recommends approval of the special use permit to allow a drive-in/drive-through in conjunction with a fast food restaurant on Lot 1, Block 1, Memory Third Addition with the following condition:

1. The site plan submitted must generally conform the site plan submitted for the special use permit.

Commissioner Levchak asked if traffic flow from the side street into the parking lot would take an immediate right turn into the drive-through.

Mr. Hutchings said that is correct

Commissioner Levchak asked if the parking stacked in the drive-through would block some of the parking spaces.

Mr. Hutchings said that is a possibility, but staff has determined that more parking than required would be provided.

Commissioner Johnson asked if there is a difference between the cars in the order area and the cars in the pick-up area or if they are all included in the stacking requirement. Mr. Hutchings said all of the vehicles shown in the drive-through on the exhibit are included in the stacking requirement.

Chair Schwartz opened the public hearing.

Abby Ehrler, Klover Architect, said they are prepared to submit the site plan for review exactly as it is shown here. She said the parking by the entrance would be for employees only so customers would not be blocked in by other vehicles.

Bruce Hicks, 1475 Brookside Lane, said he has concerns related to their community mailbox that has already been moved once. He said with new traffic turning right into this property he is concerned that someone will be hit by a vehicle while getting their mail. He then asked if all of Gussner Acres has been annexed as referenced in the staff report because they had not been informed of that happening.

Mr. Hutchings said an annexation was recently approved for all Memory Third Addition, which did include one lot of Gussner Acres and that is the only portion that was annexed. He said the remainder of Gussner Acres has not been annexed.

Commissioner Levchak asked if the mailbox of concern is one mailbox or several. Mr. Hicks said it is multiple mailboxes that serve four homes. He said it has already been hit once by a construction trailer and he would like it to be moved again.

Darin Will said he owns one of the vacant lots nearby and would like to point out that traffic flow to leave this site would turn right or cut through the existing Costco site. He said he suggests a traffic study be done to address better flow of vehicles.

There being no further comments, Chair Schwartz closed the public hearing.

Commissioner Levchak asked if they could make it a requirement that the mailboxes be moved at no cost to the owners.

Mr. Hutchings said staff is typically not involved with how the United State Postal Service places their mailboxes, but they can work through it with the applicant if that condition is added.

Commissioner Schell said he has the opinion of not including a condition related to USPS operations, as the City would not have a mechanism to enforce that condition. He said they can relay the concern to the USPS, but they do not necessarily want it to be mandated and could even further discuss it during the site plan review process.

Commissioner Bitner said between now and the site plan review would be a good time to have a conversation with USPS and keep that separate from the special use permit application.

Commissioner Levchak said he just does not want there to be any costs incurred by the adjacent owners.

Commissioner Bitner asked if maybe the consultant could absorb that expense somehow. Ms. Ehrler said they are very open to be as good of neighbors as possible and can work through the concern with USPS directly.

Commissioner Bitner asked if the intended traffic patterns could be elaborated on. Commissioner Schell said they have not been studied since it was required with the development of the Costco site; however, it was intentional to have a 3/4 access there with the hope that over time, with added connections, traffic will continue to divert through various routes.

MOTION: Based on the findings contained in the staff report, Commissioner Bitner made a motion to recommend approval of the special use permit to allow a drive-in/drive-through in conjunction with a fast food restaurant on Lot 1, Block 1, Memory Third Addition with the following condition: 1) The site plan submitted must generally conform the site plan submitted for the special use permit. Commissioner Bakken seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz and Zent voting in favor of the motion.

Commissioner Van Duyne joined the meeting at this time.

**PUBLIC HEARING - SPECIAL USE PERMIT (CHILD CARE FACILITY)
AUDITOR'S LOTS A & B OF LOT 1, BLOCK 29, STEINS 4TH ADDITION (1910 EAST
CAPITOL AVENUE)**

Chair Schwartz called for the public hearing on a special use permit to allow an expanded child care center on Auditor's Lots A & B of Lot 1, Block 29, Steins 4th Addition. The property is located in east Bismarck, south of Interstate 94 and east of North 19th Street, along the north and west sides of East Capitol Avenue (1910 East Capitol Avenue).

Mr. Hutchings gave an overview of the request, including the following findings related to land use:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use is compatible with adjacent land uses and zoning.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.

4. Adequate public facilities and services are in place or would be provided at the time of development.
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic.
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Mr. Hutchings said, based on these findings, staff recommends approval of the special use permit to allow an expanded child care center on Auditor's Lots A & B of Lot 1, Block 29, Steins 4th Addition with the following condition:

1. The site plan for development must generally conform to the site plan submitted for the special use permit.

Commissioner Schell asked what the pick-up and drop-off scenarios might look like with the expansion of the site.

Steve Arnold, Double A, LLC, said it will improve as there would be more access points with one entrance and one exit so as to avoid visitors having to cross back and forth in the parking area. He said the most activity would be in the morning and at the end of the day, so there should not be any new impacts on the adjacent neighborhood.

Chair Schwartz opened the public hearing.

Written comments in opposition to the request are attached as Exhibit B.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to recommend approval of the special use permit to allow an expanded child care center on Auditor's Lots A & B of Lot 1, Block 29, Steins 4th Addition with the following condition: 1) The site plan for development must generally conform to the site plan submitted for the special use permit. Commissioner Laning seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne and Zent voting in favor of the motion.

PUBLIC HEARING - SPECIAL USE PERMIT (ACCESSORY DWELLING UNIT) LOT 10, BLOCK 3, BOULDER RIDGE 6TH ADDITION

Chair Schwartz called for the public hearing on a special use permit for an accessory dwelling unit within a new single-family residence being constructed on Lot 10, Block 3, Boulder Ridge 6th Addition. The property is located in north Bismarck, south of 57th Avenue

NE and east of North Washington Street, at the intersection of Normandy Street and Flint Drive (5118 Normandy Street).

Mr. Nairn gave an overview of the request, including the following findings related to land use:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use is compatible with adjacent land uses and zoning.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.
4. Adequate public facilities and services are in place or would be provided at the time of development.
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic.
7. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Mr. Nairn said, based on these findings, staff recommends approval of the special use permit for an accessory dwelling unit within a new single-family residence being constructed on Lot 10, Block 3, Boulder Ridge 6th Addition.

Commissioner Levchak asked if this is a new construction home with additional living quarters why an extra permit is required.

Mr. Nairn said the unit is considered to be separate from the rest of the home and includes all of the needs of separate residential unit.

Chair Schwartz opened the public hearing.

There being no comments, Chair Schwartz closed the public hearing.

Commissioner Bitner asked if the restriction regarding the ADU needing to be owner occupied stays with the property.

Mr. Nairn said that is correct and added that it would not be by deed but rather by ordinance so it would be the same as an overoccupancy violation if it is not owner occupied. He said enforcement of any issues would essentially be complaint based.

MOTION: Based on the findings contained in the staff report, Commissioner Bitner made a motion to recommend approval of the special use permit for an accessory dwelling unit within a new single-family residence being constructed on Lot 10, Block 3, Boulder Ridge 6th Addition. Commissioner Bakken seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne and Zent voting in favor of the motion.

OTHER BUSINESS

Commissioner Bakken said the ribbon cutting was held for the new EV charging stations at both the Bismarck Airport and the Convention and Visitors Bureau, both of which were funded by the City's VW settlement project. He said staff did a lot of diligent work to procure the funds, especially Mr. Hutchings, and it took a lot of man hours to bring it to fruition with no expense to the community.

Commissioner Laning asked what the cost will be to charge a vehicle at one of the stations. Mr. Hutchings said the current rate is a five-dollar connection fee plus twenty-five cents per kilowatt hour of use.

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 5:52 p.m. to meet again on August 25, 2021.

Respectfully submitted,


Hilary Balzum
Recording Secretary


Mike Schwartz
Chair

From: [William Hutchings](#)
To: [Hilary Balzum](#)
Subject: FW: 1st community CU coffee shop
Date: Friday, July 23, 2021 8:32:28 AM

-----Original Message-----

From: Curtis Hojian <[REDACTED]>
Sent: Thursday, July 22, 2021 8:47 PM
To: William Hutchings <whutchings@bismarcknd.gov>
Subject: 1st community CU coffee shop

CAUTION: ***External Email - Use caution clicking links or opening attachments***

I run a business in the area and have a few concerns about a coffee shop in the congested area. I am also glad it should increase car count in the area!! I run NWTIRE right down the street. We love coffee so we will patronize this new business.

#1 I feel Weiss has gotten busy enough to start controlling the traffic in the area. It has not changed in 10 years for sure. 11th and Weiss pretty much a uncontrolled intersection. Not to many people really stop or yield for the yield sign. Should be a stop sign and get enforced on 11th! Trees need to be trimmed by boot barn.

#2 Weiss turning that turns to 10th and Calgary also needs to be painted. Cars pull up going north on 10th and are way left in there lane because of the design of that intersection. If coming west on Calgary and turning left onto 10th sometimes you can't get turned because cars are to far left in there lane. And I know I see at least half dozen accidents there every winter. BUSES really have a issue turning right off of Calgary going east turning north onto 10th

#3. School traffic is crazy and triples at a minimum for sure. We push cars and buses off the curb every year at nwtire! Which helps for alignments. Haha

#4. The menards corner. I have no real good ideas for that intersection. But I do know adding coffee shop and cars will make that worse then it is! Maybe eliminate the access in/out of menard which is the west side of Weiss ave Taco Bell 1st comm Menards intersection. Would lessen the confusion at that intersection.

The 10th and Calgary and 11th and Weiss would be a cheap and easy fix to guide and get traffic to stop completely at intersections.

If you wanted to stop by and talk we could walk to these intersections and I could show you how they can be a mess. And gets worse once school starts!!

Anyway just concerned and have been putting off traffic concerns in the area for a few years. Now it's time to improve issues.

If you wanted to get together I know there is other business owners managers that would walk the area to brain storm traffic improvements

Thanks for reading and taking into consideration

Curt Hojian
NWTIRE
[REDACTED]

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Special use permit for Child Care Facility 1910 East Capitol Ave
Date: Wednesday, July 28, 2021 8:24:56 AM

From: >
Sent: Wednesday, July 28, 2021 3:42 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Special use permit for Child Care Facility 1910 East Capitol Ave

CAUTION: ***External Email - Use caution clicking links or opening attachments***

There is already First Steps Learning Center on the corner. Since they added the big addition just last year the parking problem along the curbside has gotten worse. People from their daycare park all along the curve the stop light going east and west lets 2 cars 3 at the most get through before it changes. Then there is the school traffic and the bus stop on the corner of 1925 East Capitol Ave. The 2 Apartment Complexes where everyone living over there has multiple vehicles parking on both sides of the street blocking our mailboxes so the post office doesn't deliver our mail especially on Saturdays. How are the owners in the TRIPLEX'S suppose to get out of our driveways? Backing up into the street to get past one daycare is more than enough let alone TWO ! Shelley Stewart owner 1927 East Capitol Ave