

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
November 17, 2021**

The Bismarck Planning & Zoning Commission met on November 17, 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, Cole Johnson, Vernon Laning, Paul Levchak, Kevin Martin, Gabe Schell, Wendy Van Duyne, Trent Wangen, Paul Zent and Mike Schwartz.

Commissioner Brian Bitner was absent.

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

MINUTES

Chair Schwartz called for consideration of the minutes of the October 27, 2021 meeting.

MOTION: Commissioner Laning made a motion to approve the minutes of the October 27, 2021 meeting, as presented. Commissioner Zent seconded the motion and it was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

CONSIDERATION

- 2. MUNICIPAL FIFTH ADDITION – PRELIMINARY PLAT**
- 3. SIGN ORDINANCE TECHNICAL AMENDMENTS – ZONING ORDINANCE TEXT AMENDMENT**

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

**PUBLIC HEARING – ZONING CHANGE AND MINOR SUBDIVISION FINAL PLAT
SCHILLING SECOND ADDITION**

Chair Schwartz called for the public hearing on the minor subdivision final plat and the zoning change from the PUD – Planned Unit Development and CG – Commercial zoning districts to the PUD – Planned Unit Development and CG – Commercial zoning districts for Schilling Second Addition. The proposed plat is 3 lots in 1 block on 12.52 acres and is located in north Bismarck, south of 43rd Avenue NE, along the east side of the State Street frontage road (A

replat of Lot 3, Block 1, Capital Electric Headquarters Addition and Lot 3, Block 1, Buffalo Jump Addition).

Mr. Hutchings gave an overview of the requests, including the following findings related to land use for the zoning change:

1. The proposed zoning change is in a developed area of the community and is outside of the Future Land Use Plan in the 2014 Growth Management Plan, as amended.
2. The proposed zoning change is compatible with adjacent land uses and zoning.
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed.
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map.
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner.
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Mr. Hutchings then gave the findings related to land use for the minor 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 said, based on the above findings, staff recommends approval of the minor subdivision final plat for Schilling Second Addition and approval of the zoning change from the PUD – Planned Unit Development and CG – Commercial zoning districts to the PUD – Planned Unit Development and CG – Commercial zoning districts as outlined in the draft ordinance attached to the staff report.

Commissioner Bakken asked what the transition period timeline looks like. Mr. Hutchings there is not a timeline yet but the uses would likely be tied to the potential buyer.

Commissioner Schell asked how the uses allowed in the PUD ordinance were determined. Mr. Hutchings said they were determined based on previous versions, the requests of the applicants in this case for industrial uses and also what staff is or is not comfortable with. He said this is a unique site so a provision was added to allow some MA-Industrial uses in the existing building and also a special use provision for a brewery use option.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson, Hagen & Co. said staff helped work through a lot of moving parts with these requests and how to achieve the specific uses desired while retrofitting them to the area. He said the PUD can solve many problems between industrial uses and new buildings and, with a lot of easements and utility needs, the buildable area is limited. He said he appreciates a solution being found and added that the access on the north side of the site would likely move and that new access location will be determined at the time the site plan goes through the review process.

Additional written comments in opposition of the requests are attached as Exhibit A.

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

MOTION: Commissioner Levchak made a motion to approve the minor subdivision final plat for Schilling Second Addition and approval of the zoning change from the PUD – Planned Unit Development and CG – Commercial zoning districts to the PUD – Planned Unit Development and CG – Commercial zoning districts as outlined in the draft ordinance attached to the staff report. Commissioner Bakken seconded the motion and the motion was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT BIG PINES ADDITION

Chair Schwartz called for the public hearing on the minor subdivision final plat for Big Pines Addition. The proposed plat is two lots in one block on 4.792 acres and is located in north-central Bismarck, north of West Century Avenue and west of North Washington Street, along the east side of Hackberry Street (a replat of Lot 21, Block 2, Replat of Pinehurst Third Addition).

Mr. Hutchings 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. Hutchings said, based on these findings, staff recommends approval of the minor subdivision final plat for Big Pines Addition.

Brad Krogstad, KLJ, said this is a simple change to the lots for the purpose of future development needs.

Chair Schwartz opened the public hearing.

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

MOTION: Commissioner Bakken made a motion to recommend approval of the minor subdivision final plat for Big Pines Addition. Commissioner Zent seconded the motion and the motion was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

PUBLIC HEARING - SPECIAL USE PERMIT (ACCESSORY DWELLING UNIT) LOT 2, BLOCK 3, HAY CREEK PINES SUBDIVISION

Chair Schwartz called for the public hearing on a special use permit for an accessory dwelling unit on Lot 2, Block 3, Hay Creek Pines Subdivision. The property is located north of Bismarck, south of 97th Avenue NE and west of 26th Street NE, along the east side of Oak Drive (9501 Oak Drive).

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 property is located in Burnt Creek Township, which is not an organized township.
4. 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.
5. Adequate public facilities and services are in place or would be provided at the time of development.
6. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.

7. 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.
8. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
9. 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 on Lot 2, Block 3, Hay Creek Pines Subdivision, with the following condition:

1. The accessory dwelling unit will substantially conform to all submitted documents.

Commissioner Levchak asked if the structure would be both a garage and a dwelling. Mr. Nairn said that is correct, that it would be one story and only the square footage of the dwelling unit is used to determine the size of the accessory dwelling unit.

Commissioner Schell asked how the design of the separate septic system was determined. Mr. Nairn said it would be one small additional system just for the accessory dwelling unit and the builder is available for further questions on that item if needed.

Chair Schwartz opened the public hearing.

Brian Eiseman, Stoneshire Builders, said preliminary soil tests were conducted and the septic system was designed according to the results of those tests using a mound system for the project.

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 for an accessory dwelling unit on Lot 2, Block 3, Hay Creek Pines Subdivision, with the following condition: 1. The accessory dwelling unit will substantially conform to all submitted documents. Commissioner Levchak seconded the motion and the motion was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

PUBLIC HEARING- ZONING ORDINANCE TEXT AMENDMENT LOT MODIFICATION PROCESS

Chair Schwartz called for the public hearing on a zoning ordinance text amendment relating to the lot modification process.

Ms. Wollmuth gave an overview of the amendment, then gave the following findings:

1. The proposed text amendment would not adversely affect the public health, safety or general welfare.

2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance.
3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the zoning ordinance text amendment for Section(s) 14-09-03 (Definitions), 14-09-04(6) (Procedure / Lot Modifications) of the City Code of Ordinances, as presented in the draft ordinance attached to the staff report.

Commissioner Bakken asked if these changes would create any additional costs for an applicant. Ms. Wollmuth said she does not believe so and added that the preparation of documents and related expenses should remain similar to before.

Commissioner Bakken asked if these changes would create longer review times for a lot modification request.

Ms. Wollmuth said the average review time for a lot modification request now is approximately two weeks and she does not anticipate that changing.

Commissioner Levchak asked if there is a board or commission approval process for lot modifications right now.

Ms. Wollmuth said lot modifications are approved administratively so they would not require board or commission approval. She added that rural residential lot split requests would continue to need to be approved by the Planning and Zoning Commission, however.

Commissioner Schell asked if the County Auditor can still require an irregular plat to be submitted for a lot modification.

Ms. Wollmuth said that is correct and explained that they are part of the review process and will notify an owner or applicant if they are going to require an irregular plat and work through that portion themselves.

Chair Schwartz opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Zent made a motion to recommend approval of the zoning ordinance text amendment for Section(s) 14-09-03 (Definitions), 14-09-04(6) (Procedure / Lot Modifications) of the City Code of Ordinances, as presented in the draft ordinance attached to the staff report. Commissioner Levchak seconded the motion and the motion was unanimously approved with Commissioners Bakken, Johnson, Laning, Levchak, Martin, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

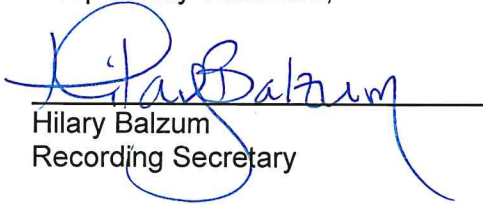
OTHER BUSINESS

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 5:31 p.m. to meet again on December 15, 2021.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Mike Schwartz
Chair

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: public hearing November 17, 2021 zoning of Schilling Second Addition.
Date: Monday, November 8, 2021 4:57:32 PM

From: pat smith <[REDACTED]>
Sent: Monday, November 8, 2021 4:52 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: public hearing November 17, 2021 zoning of Schilling Second Addition.

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

I am speaking for myself and my family that own the lots adjacent to the east side of the addition. The problem we have with zoning changes is outside storage areas. We do not want the cluttered look of outside storage to detract from any uses of our lots.

Patrick Smith



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From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Denise & Stephen McDonough Dwelling
Date: Monday, November 15, 2021 11:30:51 AM

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

From: Brekken, Tad R <[REDACTED]>
Sent: Wednesday, November 10, 2021 7:05 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Cc: Brekken, Tad R <[REDACTED]>
Subject: Denise & Stephen McDonough Dwelling

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

The only question that I have is the following.... I just want to make sure that the dwelling has the same color and style of siding as the primary dwelling. We have had other secondary dwellings/garages that have been built in our development that have had the same color of siding but the style was not the same. If they have vertical metal/vinyl siding on their home then they should have the same on the secondary dwelling/garage. This would be the only question that I would have.