



PLANNING AND ZONING COMMISSION

MEETING AGENDA June 26, 2024

| Tom Baker Meeting Room | 5:00 p.m. | City-County Office Building |
|---|-----------|---|
| <p>Any member of the public may attend this meeting. Comments may be provided on public hearing items either in person, at the appointed time, or emailed by 8 am on the meeting day to planning@bismarcknd.gov for distribution to the Commission and inclusion in minutes, unless anonymous.</p> <p>Coverage of this meeting is available on Government Access Channels 2 & 602HD or streaming live and archived online at</p> | | <p>FreeTV.org. Minutes will be available at https://www.bismarcknd.gov/agendacenter.</p> <p>The City of Bismarck does not discriminate in admission or access to its programs, activities, or services. To request accommodations for disabilities and/or language assistance, please contact the Title VI/ADA Coordinator at 701-355-1330.</p> <p>Agenda subject to change prior to meeting.</p> |
| Item No. | | Page No. |

MINUTES

1. Consider approval of the minutes of the May 22, 2024 meeting of the Bismarck Planning & Zoning Commission.
2. Consider approval of the minutes of the May 15, 2024 special meeting of the Bismarck Planning & Zoning Commission.

CONSENT AGENDA

CONSIDERATION

Requests for public hearings at a later date

3. **Hay Creek Township Section 25, Auditor's Lot S-3 (JW)** 6

Zoning Map Amendment | ZC2024-004 | *Consideration*

Staff recommends: schedule hearing schedule hearing continue table deny



REGULAR AGENDA PUBLIC HEARINGS

Requests for final action and forwarding to the City Commission

4. Home Occupations (DN) 13

Zoning Ordinance Text Amendment | ZOTA2023-005 | *Public Hearing*

Staff recommends: approve with reservations approve continue table deny

5. Misty Waters, Lots 30-36 and 38-39, Block 1 (JW) 53

PUD Amendment | PUDA2024-001 | *Public Hearing*

Staff recommends: approve approve continue table deny

**6. Part of Northern Sky Addition, and
all of Northern Sky Second Addition First Replat (IJ) 79**

Zoning Map Amendment | ZC2024-003 | *Public Hearing*

Staff recommends: approve approve continue table deny

7. Apple Creek Farm (JW) 86

Special Use Permit (Major Agriculture Use) | SUP2024-008 | *Public Hearing*

Staff recommends: approve approve continue table deny

8. Apple Creek Cottage (JW) 96

Special Use Permit (Accesory Dwelling Unit) | SUP2024-007 | *Public Hearing*

Staff recommends: approve approve continue table deny



OTHER BUSINESS

ADJOURNMENT

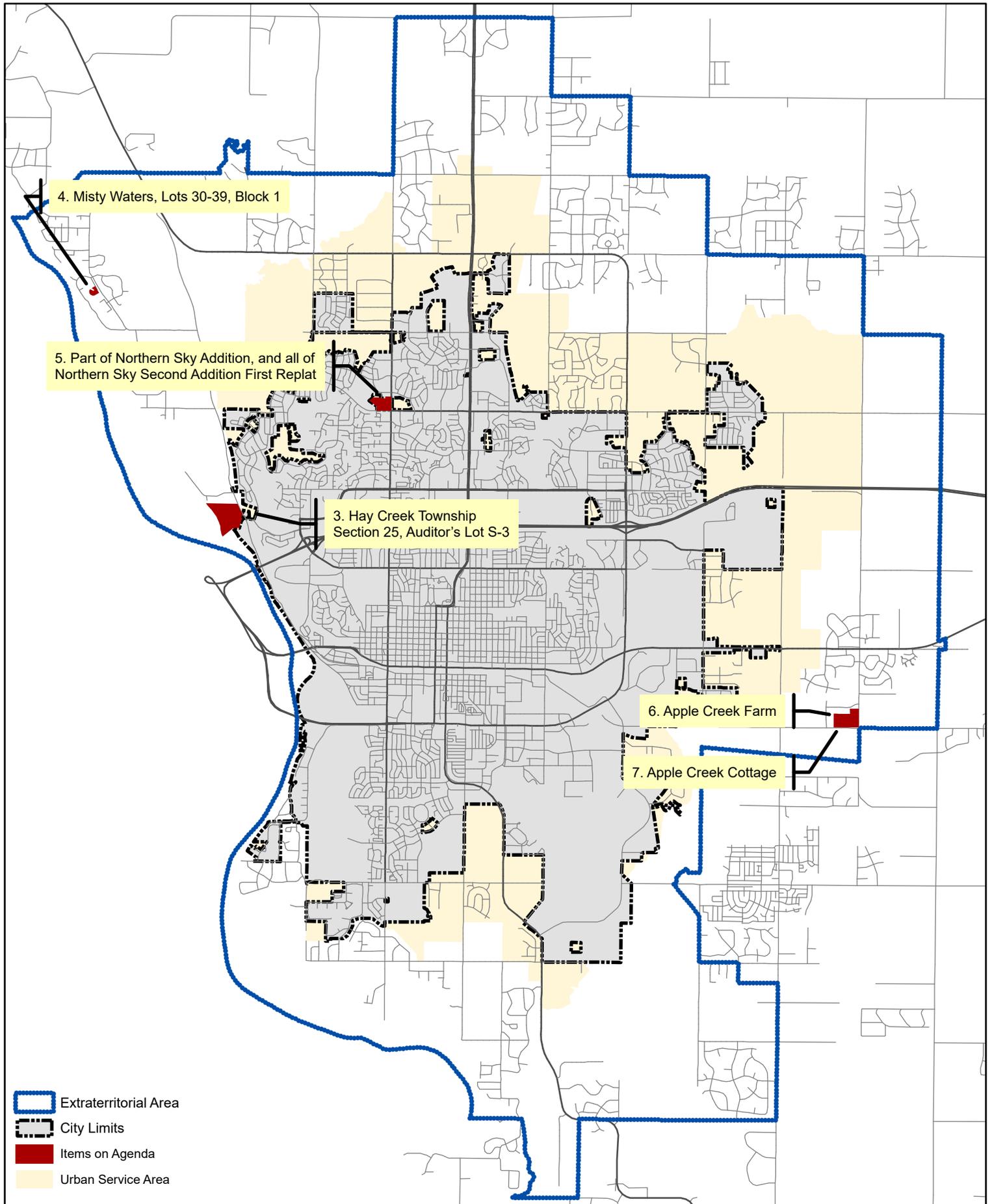
9. **Adjourn.** The next regular meeting date is scheduled for July 24, 2024.

Enclosures: Meeting Minutes of May 24, 2024
Special Meeting Minutes of May 15, 2024
Building Permit Activity Month to Date Report for May 2024
Building Permit Activity Year to Date Report for May 2024

BISMARCK PLANNING AND ZONING COMMISSION PUBLIC HEARING PROCEDURE AND PROTOCOL

All public hearings before the Bismarck Planning and Zoning Commission will follow the same basic format. This outline has been prepared to help you understand the procedure and protocol.

1. The Chair of the Planning and Zoning Commission will introduce the item on the agenda and ask staff to present the staff report.
2. The Planner assigned to the file will present the staff report on the item. The presentation will be an overview of the written staff report included in the agenda packet, which is posted on the City's website by the end of the day on the Friday before the meeting.
3. The members of the Planning and Zoning Commission may ask staff questions about the request itself or staff's recommendation, but they will not discuss the request prior to obtaining input from the public.
4. The Chair of the Planning and Zoning Commission will then open the public hearing on the request and ask if anyone would like to speak to the Commission.
5. The applicant or his or her designated agent is usually given the courtesy of speaking first to outline the proposal and/or clarify any information presented by staff. The applicant may speak at this time or wait until others have spoken.
6. The public hearing is then opened to the public to voice their support, opposition or to ask questions about the proposal. Please write your name and address on the sign-in sheet, step up to the podium, speak clearly, state both your first and last names and your address, then your comments. Speaking over the microphone rather than directly into it will provide the best audio quality. Also, please avoid tapping or banging the podium, as the microphone amplifies the sound. Your comments as well as any materials distributed to the Planning and Zoning Commissioners at this time will be made part of the public record. If you would prefer to provide written materials to staff at the beginning of the meeting, we will distribute the materials to the Commission for you.
7. Please be respectful of the Planning and Zoning Commissioners, staff and others speaking on the request. Personal attacks against the applicant or others, clapping/cheering or booing speakers is not acceptable. Staff and the applicant will only respond to questions from the Planning and Zoning Commissioners, not questions directly from those speaking at the public hearing.
8. Everyone who wishes to speak will be given a chance to speak; however, at larger public hearings, the Chair may ask speakers to limit their time at the podium to five minutes, not repeat previous testimony/comments and only speak once. Members of the Planning and Zoning Commission may ask questions of those speaking, but may also listen and deliberate after the hearing is closed.
9. After everyone in the audience wishing to speak has given his or her comments, the Chair will close the public hearing portion for the agenda item. No additional comments from the public are allowed after the hearing has been closed. At this point, the Chair will ask staff if they have any additional information or final comments.
10. The Planning and Zoning Commissioners will then discuss the proposal. They may ask staff or the applicant additional questions or for clarification of items stated during the public hearing. At the conclusion of the discussion, the Commission will make its recommendation or decision.

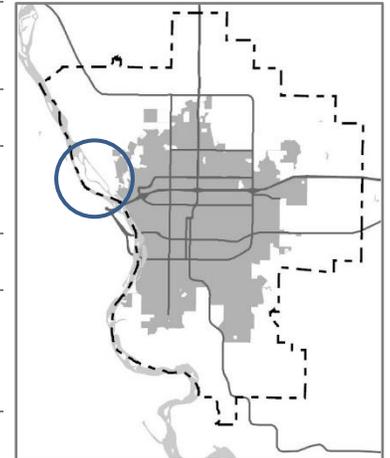


This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.



Project Summary

| | |
|------------------------------|---|
| <i>Title:</i> | Auditor's Lot S-3, Section 25, T138W-R81N/Hay Creek Township |
| <i>Status:</i> | Planning and Zoning Commission – Consideration |
| <i>Property Owner(s):</i> | Lonnie and De Ann Barth |
| <i>Project Contact:</i> | Harvey Schneider, Toman Engineering |
| <i>Project Location:</i> | West of Bismarck, between Interstate 94 and Wilderness Cove Road, along the west side of River Road |
| <i>Project Size:</i> | 71.2 acres |
| <i>Applicant Request:</i> | Rezone property for the development of one single-family dwelling and accessory structure(s) |
| <i>Staff Recommendation:</i> | Call for public hearing |



Site Information

| <i>Existing Conditions</i> | | <i>Proposed Conditions</i> | |
|----------------------------|--|----------------------------|--|
| <i>Lots/Blocks:</i> | 1 parcel | <i>Lots/Blocks:</i> | 1 parcel |
| <i>Land Use:</i> | Undeveloped | <i>Land Use:</i> | Single-family and accessory structures |
| <i>Future Land Use:</i> | Parks and Open Space (PKOS) | <i>Future Land Use:</i> | Parks and Open Space (PKOS) |
| <i>Zoning:</i> | A – Agricultural RR – Residential | <i>Zoning:</i> | A – Agricultural |
| <i>Uses Allowed:</i> | A – Agricultural RR – Large lot single-family residential and limited agriculture | <i>Uses Allowed:</i> | A – Agriculture |
| <i>Max Density:</i> | A – 1 unit / 40 acres RR – 1 unit per 65,00 square feet | <i>Max Density:</i> | A – 1 unit / 40 acres |

Area Information

Property History

| | | | |
|-----------------------------|-----------------------------|-----------------|-------------|
| <i>Zoning Jurisdiction:</i> | Extraterritorial Area (ETA) | <i>Zoned:</i> | 1973 – Part |
| <i>Township:</i> | Hay Creek (organized) | <i>Platted:</i> | N/A |
| <i>Neighborhood:</i> | Unnamed | <i>Annexed:</i> | N/A |

Project Narrative

Lonnie and De Ann Barth are requesting approval of a zoning map amendment from the A – Agriculture and RR – Residential zoning district to the A – Agriculture zoning district on Auditor’s Lot S-3, Section 25, 138W-R81N/Hay Creek Township.

The majority of the property is zoned A – Agriculture. However, approximately 7.5 acres of the northeast corner of the property is zoned RR – Residential. Portions of the area (the NE1/4 of the NE1/4, Section 25, T138W-R80N) were zoned R1 – Residential by Burleigh County prior to 1973.

In 1973, when this area became part of Bismarck’s extraterritorial area, the property was zoned RR – Residential.

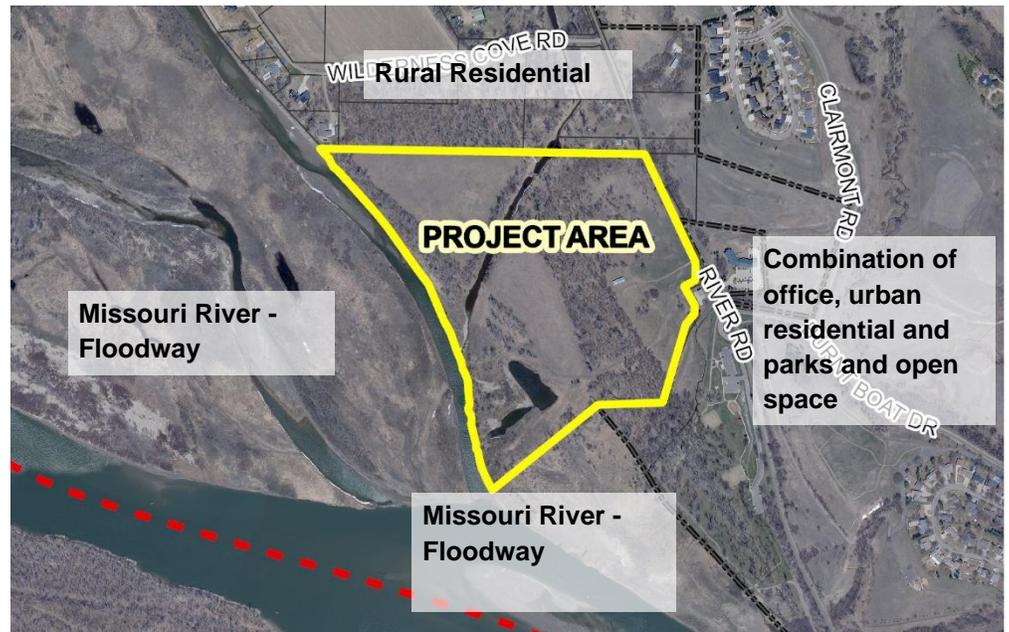
An Auditor’s Lot was created and recorded for this property in 2007. The Auditor’s Lot includes portions of the area zoned RR – Residential as well as the area zoned A – Agriculture.

The owner intends to zone the entirety of their property to A – Agriculture and construct one single-family dwelling and accessory buildings.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:

A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.



The property has been identified as Parks and Open Space (PKOS) in the Future Land Use Plan. The PKOS areas are areas kept in a

primarily a natural state, providing many important functions for the community and ecosystem. This property is located adjacent to the Missouri River

(continued)

and within the Special Flood Hazard Area (SFHA). The PKOS designation reflects the property location and SFHA. Goals and objectives of this plan as they relate to the proposed zoning map amendment are referenced in review standards below.

Adjacent land uses include rural residential to the north, a combination of office, urban residential and parks and open space to the east across River Road, and Missouri River – floodway to the south and west.

Public Engagement

Public engagement will commence if the Planning and Zoning Commission calls for a public hearing on this request.

Hay Creek Township was notified of this request on May 31, 2024.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Zoning Map Amendment

The Future Land Use Plan is adhered to with the proposed zoning map amendment ([Future Land Use Plan](#))

Yes. The proposed zoning map amendment is within the area designated as PKOS in the Future Land Use Plan, as described in the Project Context section above.

The majority of the parcel is currently zoned A – Agriculture and rezoning the RR – Residential portion of would generally conform to the character of this district. The applicant intends to construct a single-family dwelling and accessory building permitted by zoning on this 71.2 acre property. The majority of the property would be left in a natural state.

The proposed amendment is compatible with adjacent land uses and zoning ([Goal S10-a](#), [S5-a](#))

Yes. Adjacent uses are described in the project context section above. The proposed zoning district would allow the construction of one single-family dwelling and accessory buildings. Development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established ([Goal S9-e](#))

Yes. Conditions have changed since the current zoning districts of A – Agriculture and RR – Residential was established.

Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment ([Goal S1-a](#), [Goal T1-c](#))

Yes. The proposed zoning map amendment would not adversely impact housing opportunities in any way.

The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

The majority of the property included in the proposed amendment is currently zoned A – Agriculture. Rezoning the portion of the property zoned RR – Residential in 1973 for the construction of one single-family dwelling and accessory buildings may not advance the goals

(continued)

and objectives in the Comprehensive Plan but may not impede them either.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; [NDCC 40-27-03](#))

Yes. The proposed zoning map amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends scheduling a public hearing on the zoning map amendment from the A – Agriculture and RR – Residential zoning district to the A – Agriculture zoning district on Auditor’s Lot S-3, Section 25, 138W-R81N/Hay Creek Township.

Attachments

1. Draft Zoning Ordinance
2. Zoning and Plan Reference Map
3. Proposed Zoning Map

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov

CITY OF BISMARCK

ORDINANCE NO. XXXX

| | |
|-----------------------------------|-------|
| <i>First Reading</i> | _____ |
| <i>Second Reading</i> | _____ |
| <i>Final Passage and Adoption</i> | _____ |
| <i>Publication Date</i> | _____ |

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A – Agriculture and RR – Residential zoning district and included in the A – Agriculture zoning district:

Auditor’s Lot S-3, Section 25, T138W-R81N/Hay Creek Township

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance area hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

Zoning Districts

| | |
|------------|-------------------------------|
| A | Agriculture |
| RR | Rural Residential |
| R5 | Residential |
| RMH | Manufactured Home Residential |
| R10 | Residential |
| RM | Residential Multifamily |
| RT | Residential (Offices) |
| HM | Health and Medical |
| CA | Commercial |
| CG | Commercial |
| MA | Industrial |
| MB | Industrial |
| PUD | Planned Unit Development |
| DC | Downtown Core |
| DF | Downtown Fringe |

Future Land Use Plan

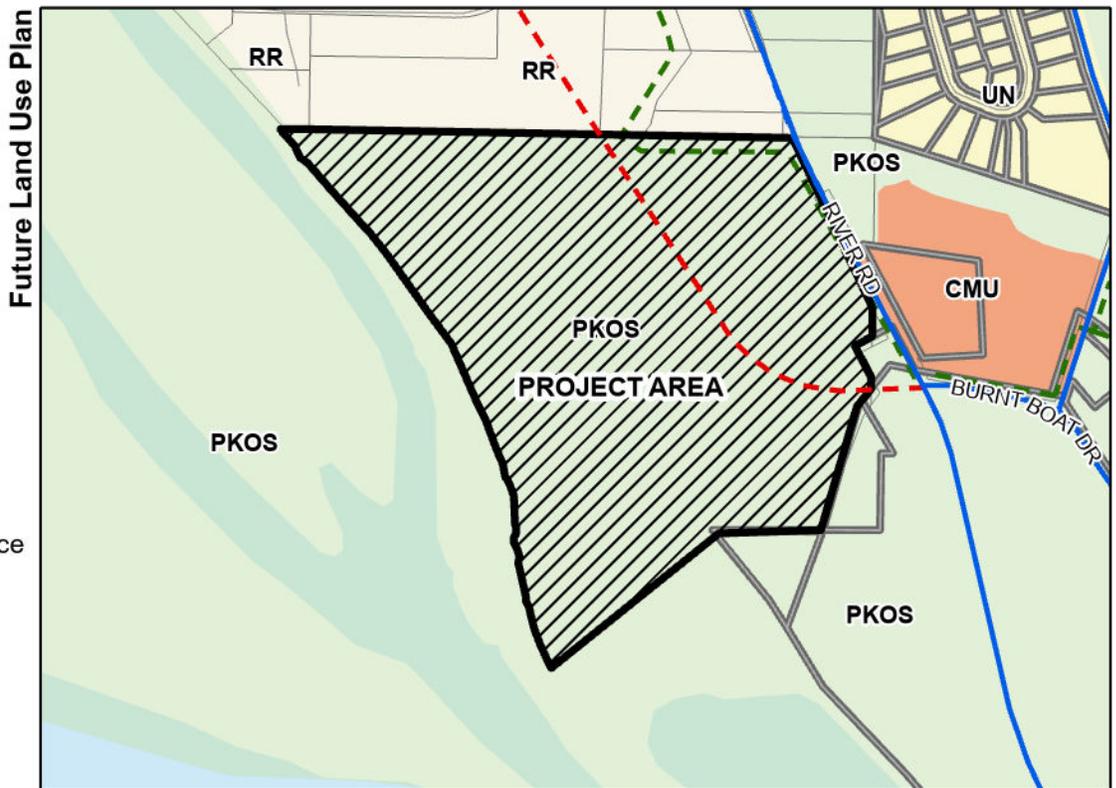
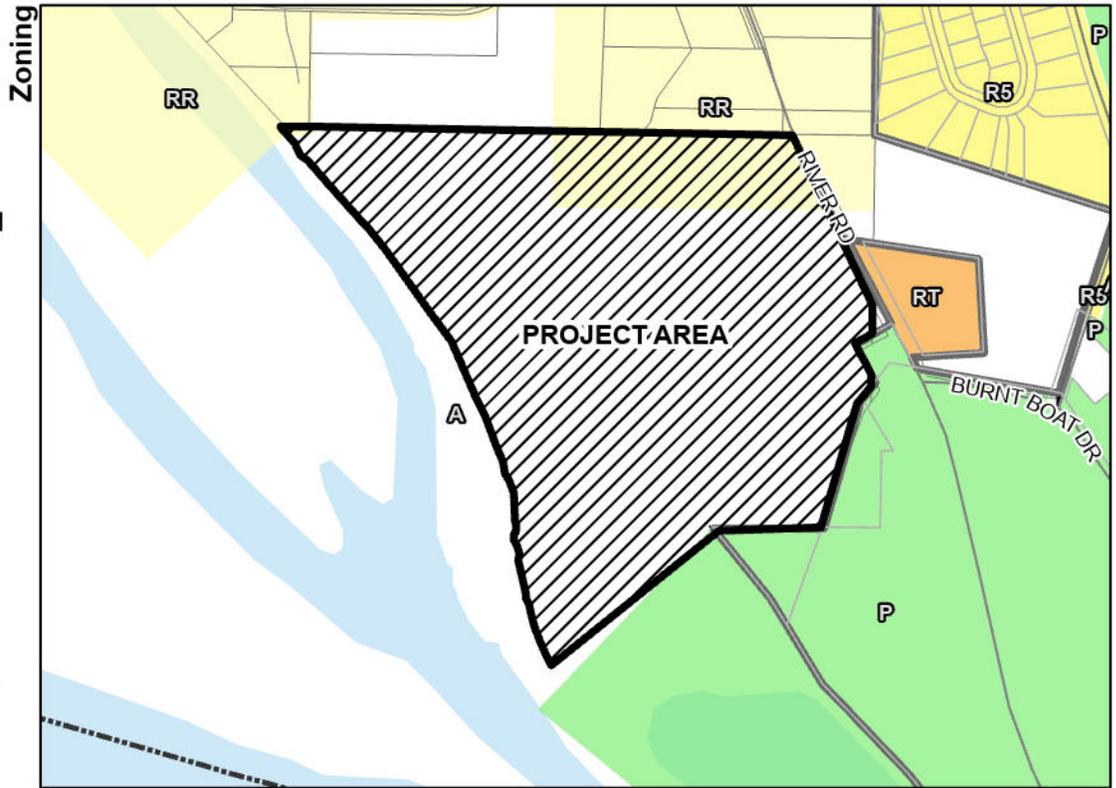
| | |
|----------------|-----------------------------|
| UN | Urban |
| NMU | Neighborhood Mixed Use |
| CMU | Community Mixed Use |
| DMU | Destination Mixed Use |
| DT | Downtown |
| IND | Industrial |
| IF | Industrial Flex |
| IMU | Industrial Mixed Use |
| INS | Institutional |
| RR | Rural |
| TR | Residential Rural |
| PKOS | Parks/Open Space |
| URA/URB | Urban Reserve Mid/Long-Term |

Active Mobility Plan

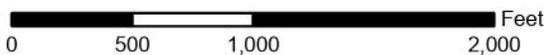
- Future Shared Trail

Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



City of Bismarck
Community Development
Planning Division
June 20, 2024

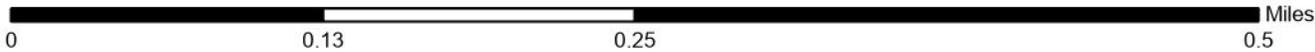
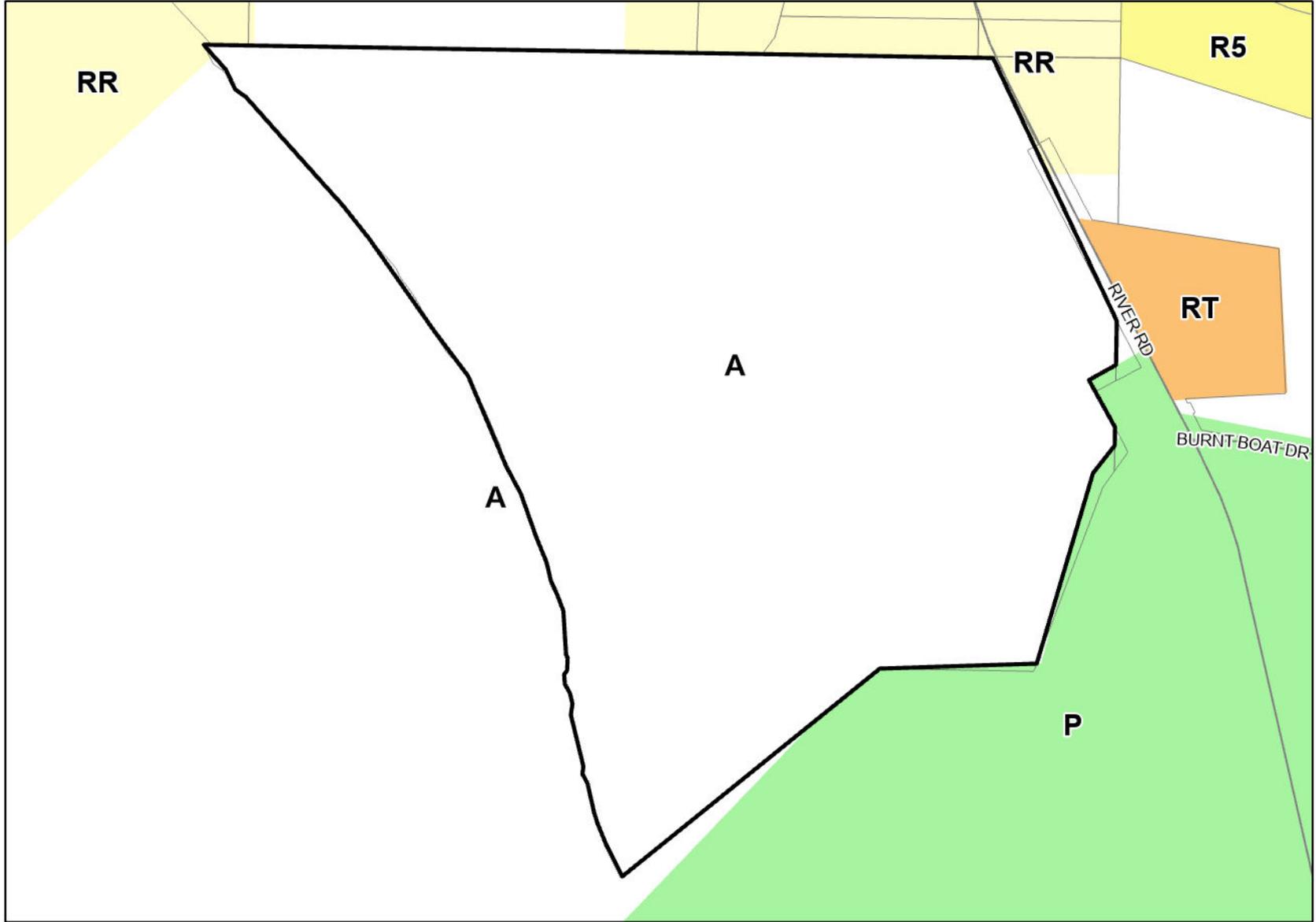
Proposed New Zoning Map

 Project Area (zoning within is proposed)

 City Limits

- Zoning Districts*
- A** Agriculture
 - RR** Rural Residential
 - R5** Residential
 - RMH** Manufactured Home Residential
 - R10** Residential
 - RM** Residential Multifamily
 - RT** Residential (Offices)
 - HM** Health and Medical
 - CA** Commercial
 - CG** Commercial
 - MA** Industrial
 - MB** Industrial
 - PUD** Planned Unit Development
 - DC** Downtown Core
 - DF** Downtown Fringe

A "C-" prior to the district indicates that special conditions would apply to the zoning district



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Project Summary

| | |
|------------------------------|--|
| <i>Title:</i> | Home Occupations |
| <i>Status:</i> | Planning and Zoning Commission - Public Hearing |
| <i>Project Contact:</i> | Daniel Nairn, AICP |
| <i>Request:</i> | Amend Section 14-03-06 and other related sections of the City Code of Ordinances related to home occupations and model homes |
| <i>Staff Recommendation:</i> | Approve |

Project Narrative

The Community Development Department requests approval of amendments to Sections 14-02-03, 14-03-06, 14-03.1-07, 14-04-01, 14-04-01.1, 14-04-03, 14-04-06, 14-04-07, 14-04-17, and 14-05-05.1 of the City Code of Ordinances related to home occupations and model homes.

The Planning and Zoning Commission held a public hearing on January 24, 2024, on this request and continued the hearing to allow staff to gather additional comments from residents of the extraterritorial area. A full review of the ordinance process is in the Public Engagement section below, and all changes from the previous version are outlined below.

The City of Bismarck has allowed home occupations in residential zoning districts since 1953, and the intent of this amendment is to provide additional opportunities for home-based businesses and remote work in the City and its extraterritorial area.

The following definition of home occupation is proposed:

“Home Occupation: A business, business activity, profession, occupation, or trade activity occurring on a residential property that is conducted by at least one or more

occupants of the residence, as an accessory use to the principal residential use of the dwelling, for economic gain other than agriculture or rental for residential occupation. Improvements made to a residential property shall not be considered activity of a home occupation.”

The draft amendment would replace the existing home occupation section of the ordinance with new language that creates a three-tier standard:

1. A *minor home occupation* would have limited to no impact on the surrounding residences and would be allowed by-right. A permit would no longer be required.
2. A *major home occupation* may have a small to moderate impact on the surrounding residences. This would require a special use permit from the Planning and Zoning Commission in urban zoning districts, and be allowed by-right in rural zoning districts.
3. Home occupations that exceed the major home occupations may only be allowed in rural zoning districts with a special use permit.

(continued)

The following criteria are used to establish permitted home occupations of each type:

- Number of employees
- Area of building used for home occupation
- Visual appearance of residence
- Outdoor storage of materials
- Commercial signs
- Noise, odor, vibrations, or electrical interference
- Number of visits from customers
- Hours of operation
- Vehicle and trailer parking
- Heavy commercial vehicles
- Hazardous materials
- Certain adult or medical marijuana uses.

Visual representations of certain standards and a map showing relevant zoning districts is attached to this staff report.

Child Care and Garage Sales

The term home occupation is intended to be inclusive to all business activities, including child care and garage sales.

Family child care operators would fall under the definition of home occupation. However, these uses are already licensed and permitted by the North Dakota Department of Health and Human Services. Therefore, these uses are listed as exceptions to certain criteria.

Certain changes are proposed to avoid confusion between zoning and state licensing categories. The term of “in-home child care” is used, which would still permit up to 12 children in a home. However, the proposed ordinance also clarifies that unlicensed “self-declared” child care, which allows up to five children, may be allowed in any dwelling unit, including multifamily dwellings. Furthermore, “family child care” is removed from specific zoning districts and applied to all residential dwellings.

Although garage sales are not explicitly noted, the criteria are written such that all garage sales currently permitted would be classified as a minor home occupation.

Model Homes

Residential developers and homebuilders, in Bismarck and elsewhere, may utilize a new construction home as a model to showcase homes in the development for sale or lease.

Model homes are not home occupations, because nobody is living on-site, but the ordinance includes new provisions to ensure these uses are allowed in all zoning districts, subject to certain restrictions. Model homes may have ancillary uses as a sales office or indoor storage.

Private Covenants

It should be noted that many residential subdivision restrictive covenants recorded in the Bismarck area prohibit all home occupations. This zoning ordinance does not have any effect on the authority or enforcement of private covenants and individuals are advised to consult with their HOA even if their home occupation complies with all City zoning ordinances.

Changes from Previous Hearing

The following changes have been made since the public hearing was opened in January 2024:

General Changes:

- Major home occupations allowed by-right in rural residential properties. Previously, a special use permit was required.
- Basic criteria added for approval of home occupations that exceed major home occupation criteria (in rural areas only)
- Purpose of all residential zoning districts amended to remove prohibition of commercial and industrial uses.

(continued)

- Definition of home occupation clarifies that improvements to residences are not applicable.
- Exemption for home occupations is included in the “junk storage” ordinance of Section 14-05-05.1.
- Model home section added.

Changes to Minor Home Occupations

- One outside employee allowed. Previously, no outside employees.
- Up to 50% of primary residence. Previously, 25% allowed. Cannot remove basic residential features (e.g. kitchen)
- Up to four students may visit at a time. Or one party. Previously, only one party.
- Commercial trucks allowed unless a Commercial Drivers License (CDL) is required. Previously, < 14,000 lbs. (CDL is required for trucks > 26,001 pounds among other criteria)
- One 3SF wall sign allowed. Previously, no signs allowed.

Changes to Major Home Occupations

- Three outside employees allowed. Previously, one outside employee allowed.
- Up to 5% of property may be used for outdoor storage, or unlimited in Agricultural districts. Previously, no outdoor storage allowed.
- Outdoor storage must be screened from roadway and neighbors.
- 3 SF sign + 1 SF per acre of property. Previously, 2 SF or 6 SF on larger lots.
- No limits on number of vehicles. Previously, limited to 3-5 depending on zoning.
- One Commercial truck requiring a CDL is allowed. Cannot exceed load restrictions. Previously, only one truck > 14,000 SF allowed.

Sources of Information

Community Development staff have researched home occupation zoning, and the findings are summarized here and attached to this staff report.

First, the American Planning Association (APA) has issued advisory reports on home occupations on three occasions: in 1953, 2006, and September 2023. While home occupations were initially prohibited in most zoning ordinances, including Bismarck’s, by the early 1950s, it became clear that certain “customary” home-based businesses should be allowed to continue operation. By the 2006 report, home occupations were promoted by APA as a positive good, especially for the reduction in commuting, and performance-based standards were proposed. The most recent 2023 report, further promotes home occupations as catalysts for equitable small business development, as long as certain standards can be met, with a recommendation to divide into two or more tiers based on impact.

Second, staff researched other communities in our region. All nine identified peer communities have a home occupation ordinance in effect. The conditions of peer communities are provided in an attached table, with Bismarck’s existing ordinance and draft proposal for comparison.

There are many similarities between the home occupation ordinances. Only two cities, Fargo, ND and Rapid City, SD, currently have a two-tier ordinance with a special use permit. Staff from both cities affirm that their current ordinance has not been problematic, in terms of staff and Planning and Zoning Commission workload, public acceptance, or enforceability.

Third, a survey on home occupations of Bismarck area residents was conducted. A total of 245 responses were received from urban and rural neighborhoods of different compositions. While the survey was not scientific, attempts were made

(continued)

to reduce bias by limiting access to only the city website and two Facebook posts.

Residents were asked their opinions on hypothetical and actual home occupations occurring on their own street. There are a wide range of opinions in the community. In general, rural residents are more accepting than urban residents of business activities in their neighborhood. Many open responses suggest criteria for determining higher impact activity.

Fourth, staff were contacted by a national non-profit organization called the Institute of Justice. This group advocates on behalf of home-based businesses and has produced material related to home occupation zoning ordinances. Staff reviewed a guide published in 2022 called "Entrepreneur from Home."

This guide surveyed 1,902 home-based businesses nationwide to identify their needs and any obstacles they face. Local zoning ordinances were noted by many business owners, and the guide provides recommendations on reform of zoning ordinances. The home occupation ordinance of Minneapolis, MN is presented as a model for communities.

Public Engagement

Members of the public in Bismarck and Burleigh County have been involved in this ordinance amendment throughout the process, and staff have utilized a number of methods to engage different groups.

The City Commission discussed the need for modification to the home occupations ordinance during their August 8, 2023, and directed staff from the Community Development Department to initiate review of this section.

A first stakeholder committee was convened and met on three occasions to guide and review drafts of the ordinance in preparation for Planning and Zoning Commission.

An online survey was released to the public between October 5 – 26, 2023, with 245 participants responding. A report summarizing results of the survey is attached to this document.

Three meetings were held with the Bismarck-Mandan Homebuilders Association between December 2023 and June 2024 that included discussion of the home occupation ordinance.

Planning and Zoning Commission

The Planning and Zoning Commission considered the request for this zoning text amendment on December 20, 2023, and called for a public hearing.

A notice was published in the Bismarck Tribune on January 13 and January 19, 2024, for a public hearing.

The Planning and Zoning Commission held a public hearing on January 24, 2024, and continued the request, directing staff to convene a second stakeholder group focused on residents and business-owners within the ETA.

A second stakeholder group was assembled, comprising two owners of home-based businesses, two rural residents, and the mayor. An ETA representative of the Planning and Zoning Commission was invited but did not attend any meetings.

This stakeholder group met on March 5, March 12, March 19, and April 9, 2024, to discuss revisions to the ordinance. The group did not achieve a consensus but did recommend a broader public meeting on a draft of the ordinance.

Staff advertised a special public meeting through normal means and also issued a press release on May 3 regarding the upcoming meeting and need to comment. An article was published in the May 13 edition of the Bismarck Tribune.

(continued)

A special meeting of the Planning and Zoning Commission was held on May 15, 2023, and numerous members of the public made comments to the Commission on the draft ordinance. Draft minutes of this meeting are included in this agenda packet for the June 26, 2024, Planning and Zoning Commission meeting.

The public has been duly notified of this request for a second public hearing. A notice was published in the Bismarck Tribune on June 14 and June 21, 2024.

All written comments received by staff prior to this second public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

Yes. On balance, this draft ordinance is aligned with the Comprehensive Plan, but there are also certain risks and potential unintended consequences to consider in an evaluation of the proposed changes.

The Comprehensive Plan references home occupations as a section of the ordinance that should be revised. Objective S9(c) states:

“Review and develop reasonable policies to guide informal or temporary activities, such as food trucks, short-term rentals, and home occupations to encourage entrepreneurship while protecting the public interest”

Staff’s intent of this ordinance is to find a workable balance for home occupations between the two goals of encouraging entrepreneurship and protecting the public interest, in terms of nuisance effects on residential neighborhoods. The proposed draft is highly favorable to businesses operating in residential areas, potentially at the expense of neighboring residents.

Objective G10(b) states:

“Promote a zoning and subdivision ordinance that is complementary with that of Burleigh County in the areas designated for rural residential development.”

This ordinance will widen the gap between Bismarck’s ordinance and Burleigh County’s more traditionally restrictive requirements for home occupations. No ordinance amendments are underway in Burleigh County to become equally permissive in rural residential areas outside of the ETA.

Goal S10 states:

“Support the arrangement of compatible land uses to minimize adjacent conflicts.”

Many of the provisions of this ordinance should alleviate potential conflicts due to traffic, noise, visual impacts, etc. However, this outcome may be debated, in particular for the more industrial types of businesses that would be permitted in residential areas through this ordinance.

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 ([Goal S9-e](#), [G10-g](#))

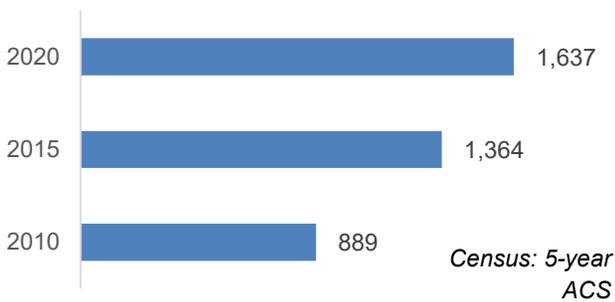
Yes. Significant portions of this section of the zoning ordinance originate from the 1953 Zoning Ordinance, although some modifications to performance standards were made over the years. Conditions have changed since this time period. Many of the home occupations listed as

(continued)

customary at the time are no longer common, and the advent of the internet has enabled remote work options that were previously unavailable.

The number of remote workers has steadily increased in recent decades. Although post-Covid 19 data are not yet available locally, recent national studies suggest 28% of full working days were spent at home.

Bismarck Labor Force Working from Home



It is no longer feasible to require permits for all home occupations, and clarity is needed to differentiate between low-impact activity and high-impact activities based on performance metrics.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; NDCC 40-27-03)

No. All of the residential zoning districts contain unequivocal prohibitions of commercial and industrial uses within residential areas. For example, one purpose in the R5 – Residential zoning district:

“To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings in the district.”

This ordinance would allow a broad range of commercial and industrial uses in direct conflict with this purpose statement.

Therefore, the purpose statements of RR, RR5, R5, R10, RM, and A districts would all be revised through this amendment to alleviate any conflicts.

The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance (Goal G10)

Yes. All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning text amendment have been reviewed and corrected, as needed.

Proper administrative procedures related to the request are being followed (Section 14-07-02, NDCC Chapter 40-47)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning text amendment has been initiated by staff from the Community Development Department, on behalf of the Planning and Zoning Commission, at the direction of the City Commission.

A public hearing was held and continued by the Planning and Zoning Commission on January 24, 2024. Because changes made to the ordinance were significant and some effected sections were not noted in previous legal advertisements, a new public hearing was called and advertised for the June 26, 2024, meeting of the Planning and Zoning Commission.

An updated draft is attached to this report for consideration by the Planning and Zoning Commission.

A public hearing has been scheduled by the Planning and Zoning Commission for this request, and all requirements for notice of this hearing have been met, as documented in this report above.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment (Goal S10-a)

(continued)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning ordinance text amendment may not adversely impact the public health, safety, and general welfare to a great extent.

However, the intensity of business activity permitted by the draft ordinance is unusual for zoning ordinances and should be considered experimental. It is possible that many new businesses will begin operation in residential areas as a result, perhaps to take advantage of tax benefits or avoid commercial building code inspections. This may have a negative impact on residents, especially in rural areas, where major home occupations would be allowed by-right. Reversing requirements for home occupations in the future will be challenging because businesses that opened legally under the current zoning would be allowed to remain as non-conforming uses, despite any future changes.

Impact on the City's enforcement responsibilities may be mixed. On the one hand, there may be more complaints generated from residential areas that staff will need to investigate and respond to. On the other hand, many of the complaints would be dismissed if the home occupation is operating within the bounds of the ordinance and no further enforcement action would be necessary in these cases.

Certain federal and state requirements associated with commercial building construction and occupation may still apply to home occupations, depending on the situation. Notably, any commercial use, regardless of size, that is open to the public must provide reasonable accommodations for persons with disabilities to be compliant with the Americans with Disabilities Act (ADA). Although this is not a zoning criterion, the business owner is still responsible for compliance.

Staff Recommendation

Based on the above findings, staff recommends approval for amendments to Sections 14-02-03, 14-03-06, 14-03.1-07, 14-04-01, 14-04-01.1, 14-04-03, 14-04-06, 14-04-07, 14-04-17, and 14-05-05.1 related to home occupations and model homes. Staff note several reservations among the findings of fact, due to risk for potential negative impact on nearby residents.

Attachments

1. Draft Zoning Text Amendment
2. Visual Examples
3. Area Maps
4. Matrix of Peer Communities
5. Home Occupation Survey Report

Staff report prepared by: Daniel Nairn, AICP, Planning Manager

701-355-1854 | dnairn@bismarcknd.gov

CITY OF BISMARCK

ORDINANCE NO. XXXX

| | |
|-----------------------------------|-------|
| <i>First Reading</i> | _____ |
| <i>Second Reading</i> | _____ |
| <i>Final Passage and Adoption</i> | _____ |
| <i>Publication Date</i> | _____ |

AN ORDINANCE TO AMEND SECTIONS 14-02-03, 14-03-06, 14-03.1-07, 14-04-01, 14-04-01.1, 14-04-03, 14-04-06, 14-04-07, 14-04-17, AND 14-05-05.1 OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO HOME OCCUPATIONS AND MODEL HOMES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. Section 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Definitions, is hereby enacted to read as follows:

* * * * *

~~Family Child Care: A detached single family dwelling, which also serves as the primary residence of the operator/provider, offering care, maintenance and supervision for hire or compensation, for less than twenty-four (24) hours per day, for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years, and generally licensed by the North Dakota Department of Human Services as an early childhood program. Family child care is considered an accessory use to the principal use of the property as single family detached residential dwelling.~~

* * * * *

Home Occupation: A business, business activity, profession, occupation, or trade activity occurring on a residential property that is conducted by at least one or more occupants of the residence, as an accessory use to the principal residential use of the dwelling, for economic gain other than

agriculture or rental for residential occupation. Improvements made to a residential property shall not be considered activity of a home occupation.

* * * * *

In-Home Child Care. A home occupation licensed by the State of North Dakota, or exempt from said licensing requirements, to provide early childhood services of care, supervision, education, or guidance of a child or children.

* * * * *

Model Home. A residential dwelling unit constructed and maintained as a display for sales and leasing of similar units in a subdivision or site.

Section 2. Amend. 14-03.1-07 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Signs – Residential Zoning District Standards, is hereby enacted to read as follows:

* * * * *

7. Home Occupations. Signs for home occupations, in accordance with Section 14-03-06(2), are permitted as follows:

- a. In a minor home occupation, no more than one (1) non-illuminated commercial on-premise wall sign is placed on the property of no greater than three (3) square feet, attached to a primary or accessory structure on the lot.
- b. In a major home occupation, no more than one (1) non-illuminated commercial sign may be placed on the property of no greater than three (3) square feet, plus one (1) square foot per acre in the lot, of sign area.
- c. Permitted home occupations that exceed the requirements for a major home occupation shall follow any sign provisions included as a condition of a special use permit.

Section 3. Amend. 14-03-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Incidental Uses, is hereby enacted to read as follows:

* * * * *

~~2. Home occupation:~~

d. ~~There is permitted in a dwelling any occupation customarily incidental to the principal use as a dwelling subject to the following limitations:~~

- ~~1. A permit for the home occupation shall be obtained from the Zoning Administrator prior to the initiation of the use. Said permit shall be valid for two years. An administrative fee may be charged. Any appeal from a decision relative to said permit shall be referred to the Board of Adjustment.~~
- ~~2. No more than one person other than a member of the immediate family occupying a dwelling is employed, except domestic help.~~
- ~~3. No stock in trade is stored outside, displayed or sold upon the premises.~~
- ~~4. No alteration of the principal building changes the character thereof as a dwelling.~~
- ~~5. No sign is used.~~
- ~~6. No more than twenty five percent of the area of one story of the building is devoted to the home occupation.~~
- ~~7. The address of the home occupation is not used in any advertising of the business or service.~~
- ~~8. No objectionable noise, odor, vibration or electrical interference is noticeable at the property line.~~
- ~~9. No traffic significantly in excess of present neighborhood levels is created.~~

e. ~~The following are hereby declared to be home occupations as intended by this section:~~

- ~~1. Dressmaker, seamstress.~~
- ~~2. Artist. A person who is skilled in the profession of the fine arts of creative work or its principles; making or doing of things that display form, beauty and unusual perception and shall be limited to a person engaging in or teaching painting, sculpture, music, literature,~~

~~dramatic art and ballet dancing. Group or student assemblies for the purpose of teaching or learning shall be limited to no more than four students at any one time.~~

~~3. Emergency treatment only of patients by physician or dentist.~~

~~4. Office uses provided said use does not generate traffic significantly in excess of present levels in the neighborhood.~~

~~5. Minister.~~

~~f. Rummage sales, yard sales or garage sales will be permitted provided that no one location hold more than two such sales in any calendar year.~~

~~Rummage, yard or garage sales may be of up to four consecutive days in duration but the two sales permitted under this section may not exceed a total of six days.~~

2. Home Occupations. A home occupation is permitted as an accessory use on any residential property in any zoning district, subject to the following provisions:

a. Permitting Process. Home occupations are further divided into major and minor types based on standards contained in this section and subject to a separate approval process for each type:

i. Minor home occupations are permitted by right. A property owner may choose to request a letter to verify compliance with provisions of this section, and the Zoning Administrator will issue a letter of compliance based on information provided by the property owner and in accordance with a process set by the Zoning Administrator.

ii. Permitting for major home occupations shall vary by zoning district:

1. In the RR – Residential, RR5 – Residential, or A – Agricultural zoning districts, major home occupations are permitted by right.

2. In all other zoning districts, major home occupations may be permitted by a special use permit, according to procedures set in Section 14-03-08 of this title.
- iii. Home occupations that do not meet either major or minor standards may be permitted only in RR – Residential, RR5 – Residential, or A – Agricultural zoning districts by a special use permit, according to procedures set in Section 14-03-08 of this Title upon a finding that:
 1. The issuance of the permit would conform to the intent of that zoning district and the goals and objectives of the Comprehensive Plan
 2. Requirements of the International Building Code (IBC) would be met, as applicable.
 3. The proposed home occupation remains clearly subordinate to the principal residential use.
- iv. More than one (1) home occupation may be permitted on any residential property. In such cases, all standards and permits of this section apply to the cumulative total of all home occupations on the property.
- b. Minor home occupations. A minor home occupation is any home occupation that meets all of the following standards:
 - i. The home occupation is conducted on-premises by one (1) or more residential occupants of the dwelling and no more than one (1) additional employee, business partner, independent contractor or any person affiliated with the home occupation that does not reside on-premises.
 - ii. Up to fifty percent (50%) of the floor area of the principal structure and up to one hundred percent (100%) of one (1) accessory structure is utilized by the home occupation, including storage of associated goods, provided that customary residential amenities, such as a kitchen and bathroom, are not removed such that the structure would no longer meet building code standards as a dwelling unit.

- iii. There exists no outward visual evidence to indicate the presence of the home occupation to an uninformed person, such as alterations of the dwelling from a customary residential appearance, overnight storage of products or materials outside.
- iv. No more than one (1) non-illuminated commercial on-premise wall sign is placed on the property of no greater than three (3) square feet, attached to a primary or accessory structure on the lot, subject to all requirements of Chapter 14-03-01 of the City Code of Ordinances.
- v. There exists no noise, odor, vibration, or electrical interference associated with the home occupation that is noticeable at the property line.
- vi. Visits from customers, clients, or patients are by appointment only and limited to no more than one (1) party, or up to four (4) students for group lessons, at any time. Notwithstanding, multiple said parties may be present on the property during not more than four (4) events per year, with each event not to exceed four (4) days and no events occurring consecutively. At no time may a home occupation generate traffic significantly greater than that of a conventional residential use.
- vii. Visits from customers, clients, patients, or deliveries occur only during the hours of 7 AM to 11 PM.
- viii. Not more than two (2) vehicles and/or two (2) trailers associated with the home occupation may park or stand on the property or street, if permitted, at any time, and any on-street parking shall meet requirements of Chapter 12-13-19 of the City Code of Ordinances or any requirements of Burleigh County, as applicable.
- ix. Any vehicles, including trailers and equipment, associated with the home occupation must be parked in an orderly manner on surface suitable for parking, devoid of tall grass or other potential fire hazards, and debris from vehicles may not enter a public right-of-way, in accordance with Section 8-07.1-01(2) of the City Code of Ordinances.

- x. No vehicles associated with the home occupation which require a Commercial Driver License (CDL) to operate in North Dakota may park overnight on the property or the street.
 - xi. There is no storage of any flammable, toxic, explosive, or otherwise hazardous materials to a greater extent than stored in a typical residential household, and no hazardous material is discharged into any sewer, storm drain, or the ground.
 - xii. The use is not an adult entertainment center, adult bookstore, or registered in North Dakota as a compassion center to dispense or produce medical marijuana.
- c. In-Home Child Care. Notwithstanding provisions of Section 14-03-06(2)b(i), Section 14-03-06(2)b(ii), and Section 14-03-06(2)b(v), in-home child care may be permitted as a minor home occupation, subject to the following standards:
- i. In any single-family or two-family dwelling, the in-home child care is licensed by the State of North Dakota as a Family Child Care or a Group Child Care for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years.
 - ii. In any dwelling unit, the in-home child care is classified by the State of North Dakota as a Self-Declaration Provider for no more than five (5) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years.
- d. Major home occupations. A major home occupation is any home occupation that meets all of the following standards:
- i. The home occupation does not meet all standards required of a minor home occupation.
 - ii. The home occupation is conducted on-premises by one (1) or more residential occupant of the dwelling and no more than three (3) additional employees, business partners, independent contractors or any

person affiliated with the home occupation that do not reside on-premises.

- iii. Up to fifty percent (50%) of the floor area of the principal structure, one hundred percent (100%) of accessory structures, is utilized for the home occupation, provided that customary residential amenities, such as a kitchen and bathroom, are not removed such that the structure would no longer meet building code standards as a dwelling unit.
- iv. The home occupation may utilize one (1) contiguous outdoor area of up to five (5) percent of the total lot area or 10,000 square feet, whichever is less, including storage of associated goods, vehicles, equipment, and trailers. Notwithstanding, no limit on area of outdoor area shall apply in the A – Agricultural zoning district.
- v. The principal residential dwelling is not altered from a customary residential appearance.
- vi. Outdoor and overnight storage of products or materials associated with the home occupation may not be in a front yard and must be screened by fencing, buildings, or landscaping buffer yards, in accordance with Section 14-03-11(10) of the City Code of Ordinances, such that materials are not clearly visible from a public right-of-way and adjoining properties during all seasons. Trailers may be loaded with items.
- vii. No more than one (1) non-illuminated commercial on-premise sign is placed on the property of no greater than three (3) square feet, plus one (1) square foot per acre in the lot, of sign area, subject to all requirements of Chapter 14-03-01 of the City Code of Ordinances.
- viii. Noise ordinance requirements contained in Chapter 08-10 of the Code of Ordinance are met at all times, and there exists no objectionable odor, vibration, or electrical interference associated with the home occupation and above typical residential levels that is noticeable at the property line.
- ix. Visits from customers, clients, patients, employees, or deliveries do not create an undue burden on traffic

safety and congestion or on-street parking availability in the neighborhood. At no time may a home occupation generate traffic significantly greater than that of a conventional residential use.

- x. Visits from customers, clients, patients, employees, or deliveries occur only during the hours of 7 AM to 11 PM.
 - xi. Any vehicles, including trailers and equipment, associated with the home occupation must be parked in an orderly manner on surface suitable for parking, devoid of tall grass or other potential fire hazards, and debris from vehicles may not enter a public right-of-way, in accordance with Section 8-07.1-01(2) of the City Code of Ordinances.
 - xii. Any on-street parking of vehicles associated with the home occupation shall meet requirements of Chapter 12-13-19 of the City Code of Ordinances or any requirements of Burleigh County, as applicable.
 - xiii. No more than one (1) vehicle associated with the home occupation which requires a Commercial Driver License (CDL) to operate in North Dakota may park on the property at any time. At no time may said vehicle exceed the load restrictions in place for any time of the year on the adjoining street or park on the street.
 - xiv. There is no storage of any flammable, toxic, explosive, or otherwise hazardous materials to a greater extent than stored in a typical residential household, and no hazardous material is discharged into any sewer, storm drain, or the ground.
 - xv. The use is not an adult entertainment center, adult bookstore, or registered in North Dakota as a compassion center to dispense or produce medical marijuana.
3. Model Homes. A model home is permitted on any residential property in any zoning district, subject to the following provisions:
- a. Model homes are subject to all sign requirements for Non-Residential Uses in a residential zoning district.

- b. Model homes shall be converted to residential use or removed upon complete development of the subdivision or site.
- c. Model homes may contain ancillary office or indoor storage use provided the principal use of the property remains sales or leasing of homes in the subdivision or site and all building and fire codes of the International Building Code (IBC) are met.

Section 4. Amend. 14-04-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the RR – Rural Residential zoning district, is hereby enacted to read as follows:

- 1. General description. The RR residential district is established as a district in which the principal use of the land shall be for low density, large lot single-family dwellings, limited agriculture, and limited equine husbandry. For the RR residential district, in promoting the general purposes of this title, the specific intent of this section is:

* * * * *

- a. ~~To prohibit general commercial and industrial uses of the land and to prohibit any use which would substantially interfere with the development or the continuation of single family dwellings and limited agricultural uses.~~ To protect the quiet enjoyment of residential property and discourage all uses or activities that interfere with or detract from these principal uses of this zoning district.

* * * * *

- 2. Uses Permitted. The following uses are permitted.

* * * * *

- a. ~~Family child care.~~

Section 5. Amend. 14-04-01.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the RR5 – Rural Residential zoning district, is hereby enacted to read as follows:

- 1. General description. The RR5 residential district is established as a district in which the principal use of the land shall be for low density, large lot single-family dwellings, limited agriculture, and limited equine

husbandry. For the RR5 residential district, in promoting the general purposes of this title, the specific intent of this section is:

* * * * *

- a. ~~To prohibit general commercial and industrial uses of the land and to prohibit any use which would substantially interfere with the development or the continuation of single-family dwellings and limited agricultural uses. To protect the quiet enjoyment of residential property and discourage all uses or activities that interfere with or detract from these principal uses of this zoning district.~~

* * * * *

2. Uses Permitted. The following uses are permitted.

* * * * *

- a. ~~Family child care.~~

Section 6. Amend. 14-04-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the R5 – Residential zoning district, is hereby enacted to read as follows:

- 1. General description. The R5 residential district is established as a district in which the principal use of land is for single-family dwellings. For the R5 residential district, in promoting the general purposes of this title, the specific intent of this section is:

* * * * *

- a. ~~To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings in the district. To protect the quiet enjoyment of residential property and discourage all uses or activities that interfere with or detract from these principal uses of this zoning district.~~

* * * * *

2. Uses Permitted. The following uses are permitted.

* * * * *

- a. ~~Family child care.~~

Section 7. Amend. 14-04-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the R10 – Residential zoning district, is hereby enacted to read as follows:

1. General description. The R10 residential district is established as a district in which the principal use of land is for single-family and two-family dwellings. For the R10 residential district, in promoting the general purposes of this article, the specific intent of this section is:

* * * * *

- a. ~~To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single-family and two-family dwellings in the district.~~ To protect the quiet enjoyment of residential property and discourage all uses or activities that interfere with or detract from these principal uses of this zoning district.

* * * * *

2. Uses Permitted. The following uses are permitted.

* * * * *

- a. ~~Family child care, when located in a detached single-family dwelling.~~

Section 8. Amend. 14-04-07 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the RM – Residential zoning district, is hereby enacted to read as follows:

1. General description. The RM residential district is established as a district in which the principal use of land is for single-family and two-family dwellings. For the RM residential district, in promoting the general purposes of this article, the specific intent of this section is:

* * * * *

- a. ~~To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of residential structures in this district.~~ To protect the quiet enjoyment of residential property and discourage all uses or activities that interfere with or detract from these principal uses of this zoning district.

Section 9. Amend. 14-04-17 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the A – Agricultural zoning district, is hereby enacted to read as follows:

1. General description. The agricultural district is established as a district in which the predominant use of land is for general agricultural uses. For an A agricultural district, in promoting the general purposes of this ordinance, the specific intent of this section is:

* * * * *

- a. To ~~prohibit~~ discourage scattered commercial and industrial use of land, and to prohibit any other use which would interfere with an integrated and efficient development of the land for more intensive urban uses as the city expands.

* * * * *

2. Uses Permitted. The following uses are permitted.

* * * * *

- a. ~~Family child care.~~

Section 10. Amend. 14-05-05.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to accumulation of certain items, is hereby enacted to read as follows:

1. No person shall cause, permit, keep, accumulate or allow the accumulation of any commercial equipment, junk, refuse, surplus, scrap, salvage or other similar items outside of a closed building in any residentially-zoned district, except for storage associated with certain home occupations as permitted under Section 14-03-06 of the City Code of Ordinances. The items for which accumulations are prohibited under this section may include one or more of the following but are not limited to hazardous wastes, scrap metals, used or scrap lumber, household appliances, machinery, farm machinery, commercial equipment, new or used building materials, construction or demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items has value or is operational shall not excuse conduct prohibited by this section. For the purposes of this section, residential districts shall include RR, RR5, R5, RMH, R10, RM, RT,

PUD, and HM. Prior to signing a complaint under this section, the Health Officer or his or her agent must serve the property owner or tenant with a notice and order pursuant to Section 14-05-03.1.

Section 11. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 12. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 13. Effective Date. This ordinance shall take effect after final passage, adoption and publication.

Visual Examples for Bismarck Home Occupation Ordinance | June 26, 2024

Example of Maximum Area of Outdoor Storage Allowed with Major Home Occupation.

Proposed 5% is shown in blue. Prior recommendation of 3.5% in red.



Size of sign allowed with major home occupations. Sign must be attached to building in minor.



Examples of CDL vehicles from NDDOT website – Not allowed in minor, one in major

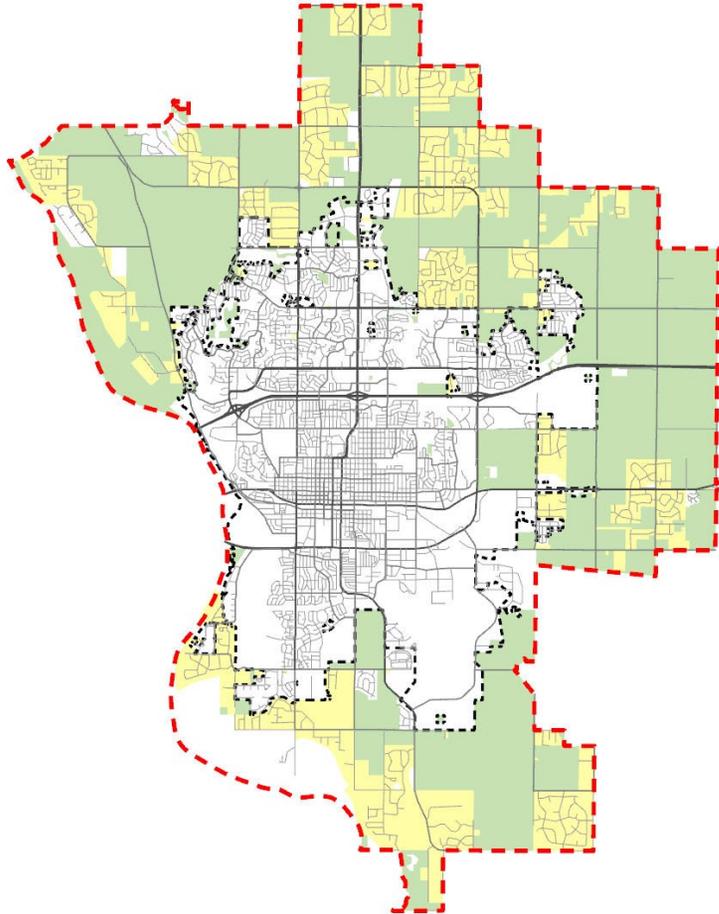


Four-person maximum for lessons in a minor home occupation (no limit in major)



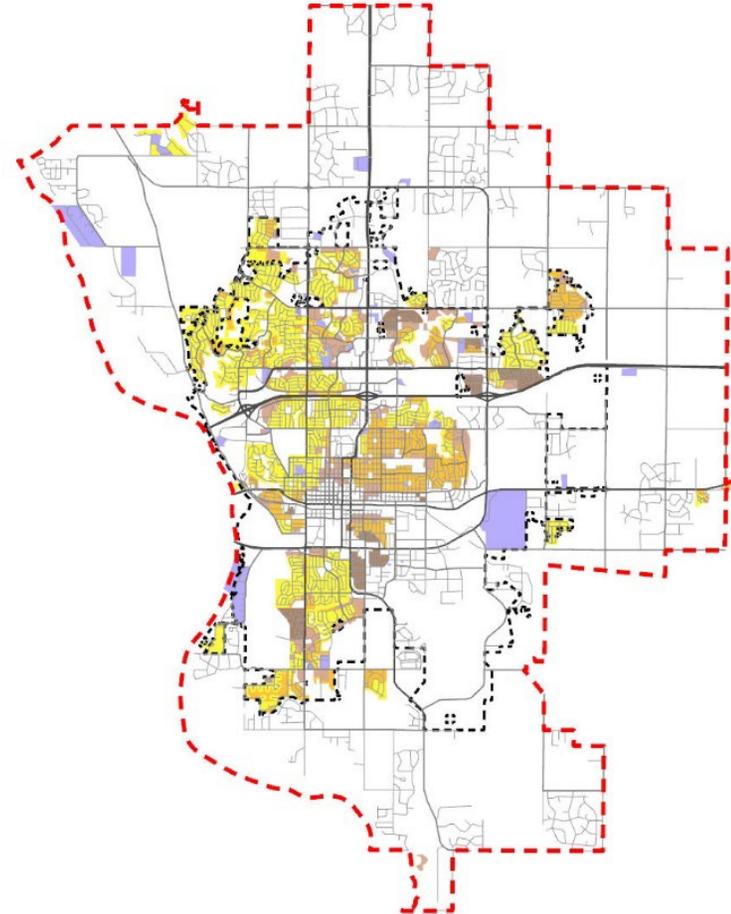
Maps for Areas Referenced in Home Occupations Ordinance

Rural Zoning Districts (including some in City)



RR – Rural Residential
RR5 – Rural Residential
A – Agricultural

Urban Zoning Districts (including some in ETA)



All other zoning districts including:
R5 – Residential
R10 – Residential
RM – Residential
PUD – Planned Unit Development
Any non-conforming residence in a different zoning district

Home Occupation Zoning Requirements from Bismarck Peer Communities

| City | Types | Max Area | Employees | Signs | Appearance | Vehicles | Performance | Prohibitions | Other | Permitting |
|---------------------------|----------------------------|--|-------------------------------------|--|--|---|--|---|--|---------------------------|
| Bismarck, Existing | None | 25% of primary, Not in accessory | 1 additional | Prohibited | No alteration from residential | Not addressed. No significant traffic | Noise, fumes, etc. prohibited | None. Unclear on specific uses. | No advertising address. | Permit required |
| Bismarck, Proposed | Major and Minor | 50% of floor area and 100% of accessory | 1 additional minor, 3 major | 3 SF and + 1 per acre (major) | No alteration from residential | 2 vehicles/2 trailers (minor). No CDL Trucks minor, 1 CDL Truck major | Noise, fumes, electric, etc. prohibited | Adult, Marijuana | Outdoor storage allowed on 5% of lot (major). Only Daytime hours | Minor by right, Major SUP |
| Fargo | Major and Minor | 25% of primary | 1 additional, major only | 1 SF wall sign, no lighting | No alteration from residential | Max 1 commercial truck less than 1 ton. | Noise, fumes, electric, etc. prohibited | Vehicle repair, dispatch, mortuary, animal, firearms, adult | Minor: limits on number of customers, daytime hours. | Minor by-right, Major SUP |
| Minot | None | 25% of floor area, or 100% of accessory | 2 total, with exceptions for family | 4 SF no lighting | "Indistinguishable from any other dwelling." | Max 2 parked on street. 1 commercial vehicle allowed. Max daily travel | Noise, fumes, etc. prohibited | Animal boarding, Retail, vehicle repair | N/A | By right, no permit |
| Grand Forks | None | 30% of floor area. No limit in accessory | 1 additional part-time only | 2 SF, front yard only. Lighting required. | No change in outward appearance | Not addressed. No significant traffic | Odors, noise, etc. | None | Daytime hours of operation | By right, no permit |
| Rapid City, SD | Major and Minor | 20% of floor area | Only residents | 1 SF, no lighting | No outward visible evidence | 2 deliveries a week. No unusual traffic. No more than 1 additional vehicle. | Noise, smoke, heat, etc. | None | No mechanical equipment. Appointment only. Daytime hours | Minor by-right, Major SUP |
| Sioux Falls, SD | None | None | Only residents | 2 SF, no lighting | No alteration from residential. No product displays. | No large truck deliveries. 4 visits per day. No off-street parking. | Noise, vibration, glare, electrical etc. | Retail | No separate entrance. Inside only. | Permit required |
| Billings, MT | Craft has separate process | 25% of floor area or 500 SF | Only residents | Prohibited | No indication from outward appearance | One commercial vehicle > 12,000 lbs. 4 visits per hour max. | Light, noise, vibration, fumes, etc | Large goods, vehicle repair, dispatch, animals, Marijuana | Daytime hours. Inside only. | Review for craft only |
| Helena, MT | None | 49% of floor area or 100% of accessory | Only residents | 2 SF, no lighting | No display of products | No parking lot or disturbance. No large truck deliveries. | Noise, vibration, smoke, odor, etc. | Marijuana | No separate entrance. | Business license |
| Saint Cloud, MN | None | 25% of one story | Only residents | 1 SF, no lighting | None | None | None | Retail | N/A | By right, no permit |
| Rochester, MN | None | 25% of floor area or 1,000 SF. Not in accessory | 1 additional | 2 SF or 12 SF, based on zone, no lighting, | No non-residential entrances. No display. | One commercial vehicle < 10,000 lbs. | noise, vibration, glare, etc. | Animals, | Only homemade products sold. | Permit required |
| Sioux City, IA | None | 25% of floor area or 400 SF, excluding accessory | Only residents | 2 SF, no lighting | No alteration from residential | One commercial vehicle < 14,000 lbs. no ads. Small truck delivery only. | noise, vibration, glare, etc. | Medical, vehicle repair, animals, retail, salvage, restaurant | No advertising address. | Permit required |

Home Occupation Online Survey Report

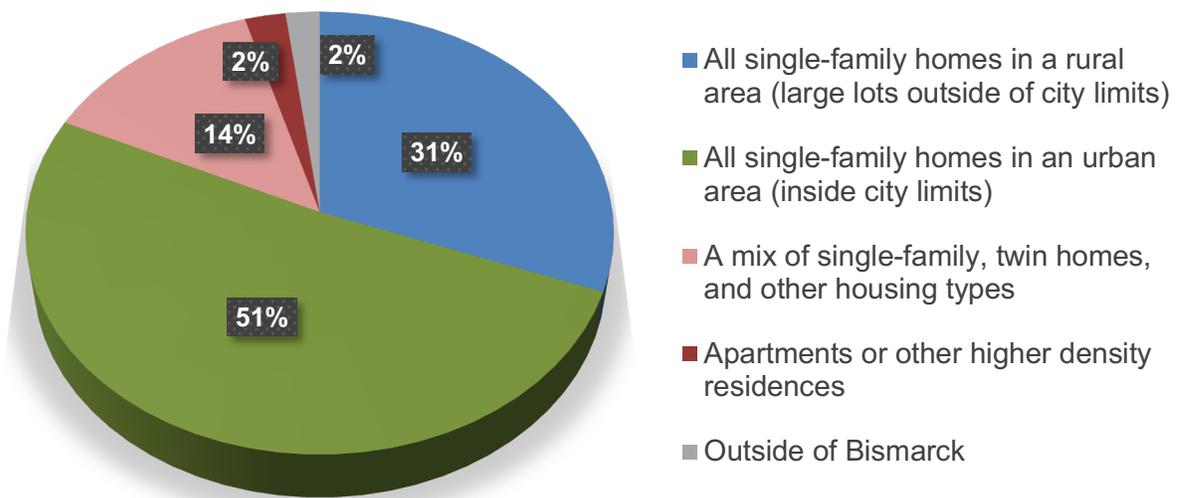
October 26, 2023 – Bismarck Community Development Department

In preparation for an ordinance update on Home Occupations, the Planning Division of the Community Development department conducted an online survey between October 5 – 26, 2023.

The survey did not have a controlled sample, but it could only be accessed through the city front page of the city website or two Facebook posts. A total of 245 responses were received during this period. The results are summarized in this report, and open-ended responses are included in their entirety.

Neighborhood Types

Respondents were asked to describe the street that they live on. The following neighborhood types were identified:



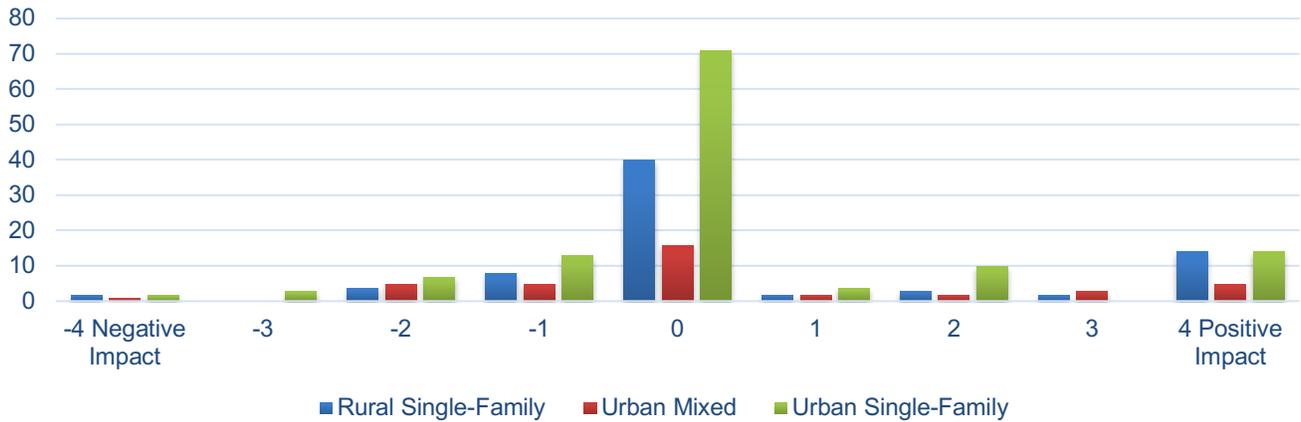
Responses outside of the City of Bismarck were not permitted to answer any questions other than the final open-ended response. For the purpose of analysis, the mixed-use urban and higher density urban categories are combined to allow a sufficient sample size.

Home Occupation Scenarios

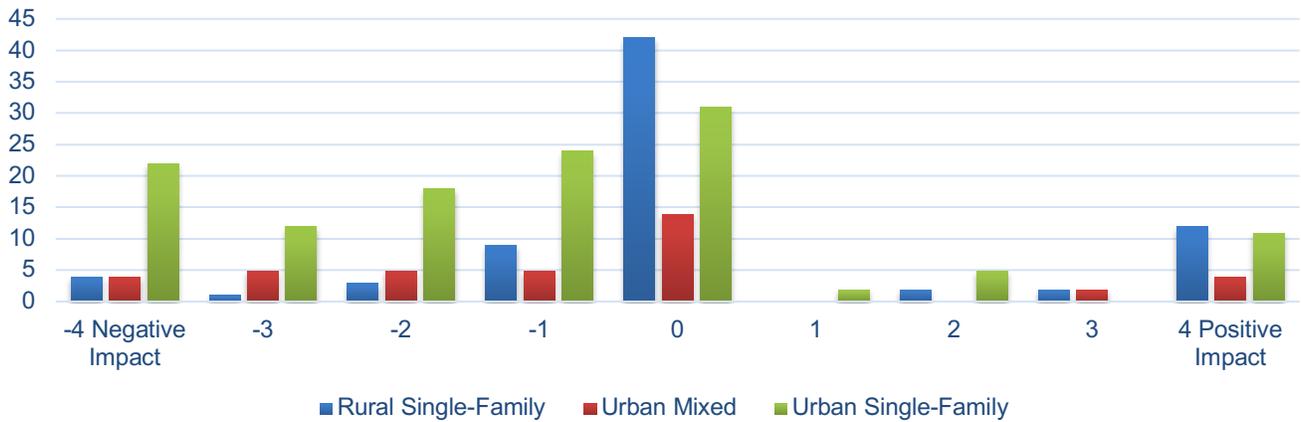
Respondents were presented a series of scenarios and asked to “imagine that a new neighbor moves into a home on your street, and rate how you believe each of the scenarios would impact your own household’s quality of life or property values.” Responses ranged from -4 Negative Impact to +4 positive impact, with 0 in the middle indicating no impact from the home occupation.

The results are presented below in question order, by neighborhood type:

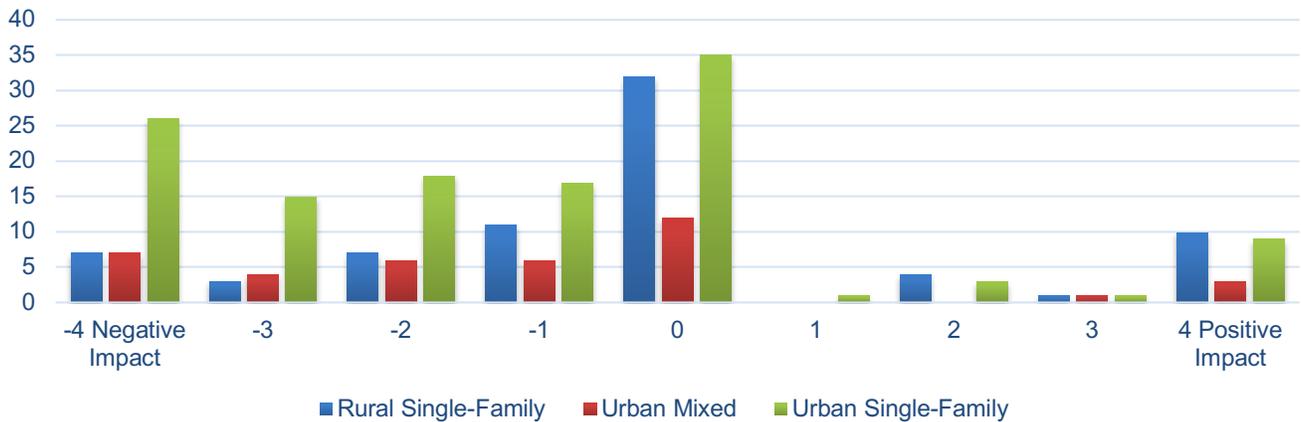
A music teacher offers lessons from the home with approximately 30 students arriving each week.



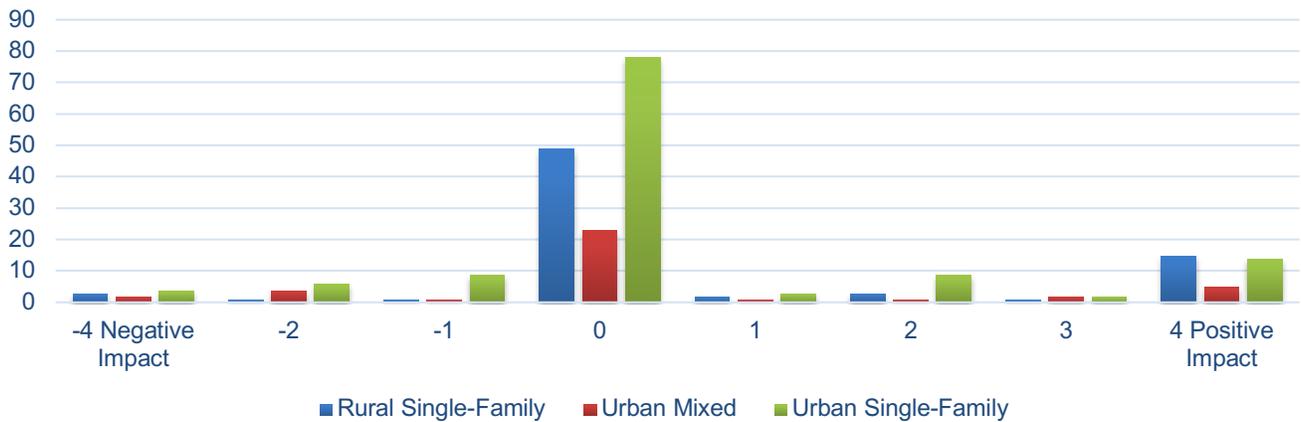
A self-employed contractor works out of their own home, parking a truck, a trailer, and other equipment on the property and storing construction materials in an indoor shed.



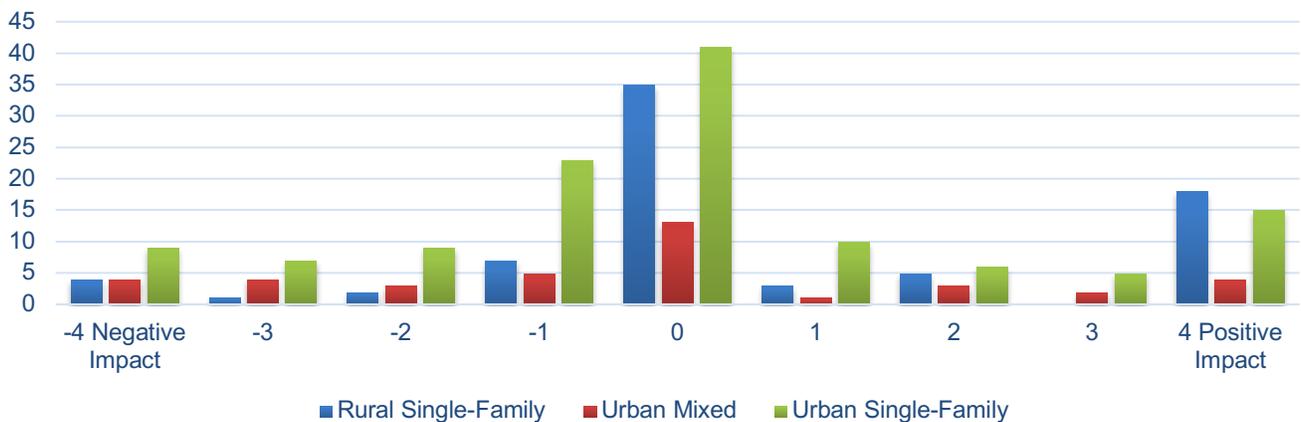
A landscaping business with five employees operates out of the owner's home. Workers gather at the home each day before going to job sites, and materials are stockpiled in the backyard mostly hidden by vegetation.



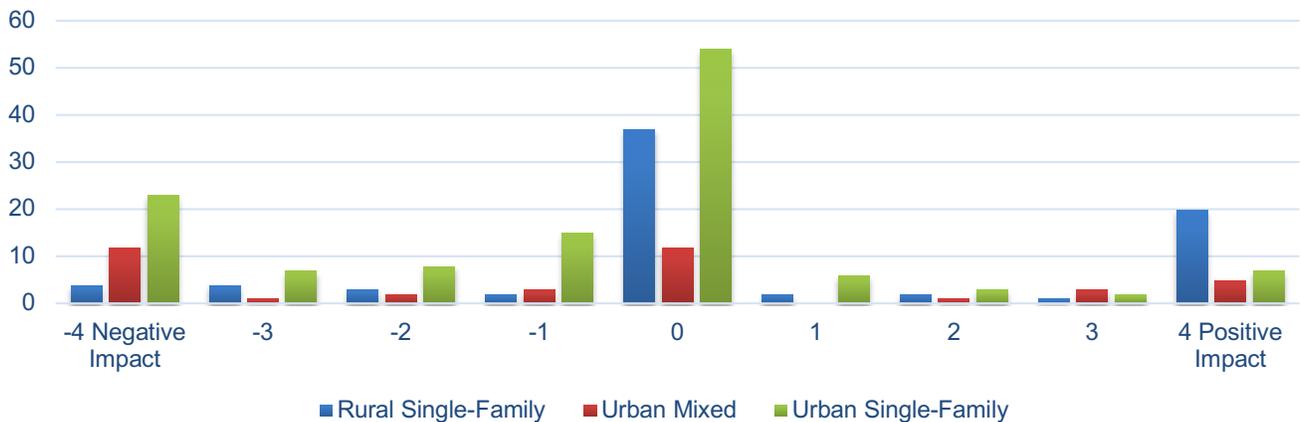
A woodworker builds custom furniture in a shop accessory to the home. About 10-15 products are sold each month online and delivered to the customer.



A home-based day care with 12 kids is operated by the homeowner and one employee.



A licensed firearms retailer repairs and sells guns and ammunition from their own residence.



Actual Home Occupations

The next section of the survey inquired about any actual home occupations that are occurring on the respondent's street. A total of **132 (54%)** respondents report a home occupation on their own street.

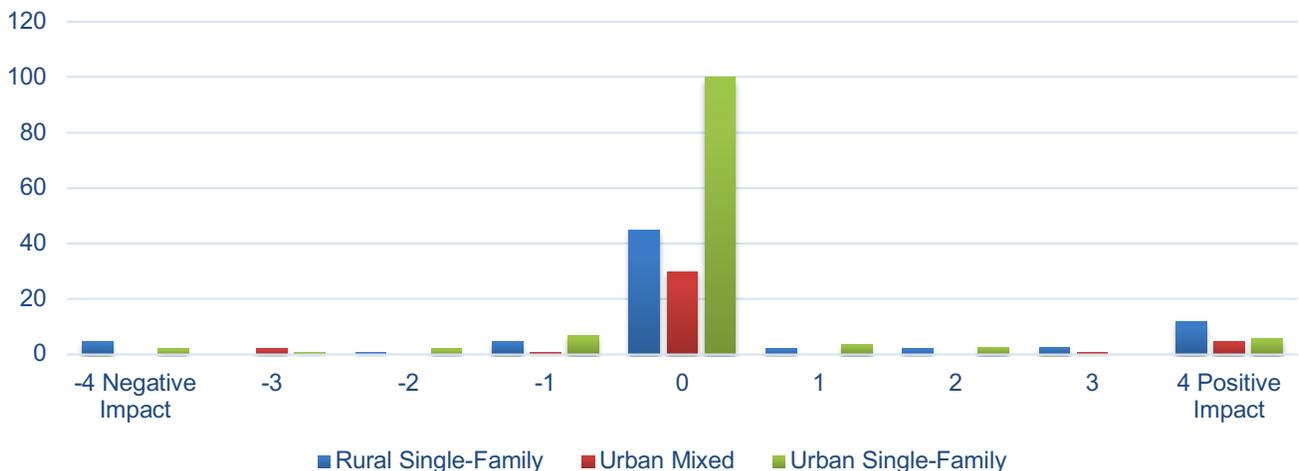


The following business types were noted, in order of most to least common:

| Business Type | Count | Percent |
|--------------------------|-------|---------|
| Child Care | 40 | 25% |
| Construction | 39 | 25% |
| Landscaping | 27 | 17% |
| Auto/Boat Repair | 6 | 4% |
| Small Engine Repair | 4 | 3% |
| Woodworking/Furniture | 4 | 3% |
| Snow Removal | 4 | 3% |
| Animal Training/Grooming | 4 | 3% |
| Taxidermy | 3 | 2% |
| Appliance Repair | 3 | 2% |
| Medical Service | 3 | 2% |
| Product Retail | 3 | 2% |

| Business Type | Count | Percent |
|---------------------|-------|---------|
| Fabric Services | 3 | 2% |
| Hair Stylist | 2 | 1% |
| Trucking | 2 | 1% |
| Music Lessons | 2 | 1% |
| Junkyard | 2 | 1% |
| Massage | 1 | 1% |
| Cleaning Services | 1 | 1% |
| Business Consultant | 1 | 1% |
| Personal Trainer | 1 | 1% |
| Welding | 1 | 1% |
| Photography | 1 | 1% |
| DJ | 1 | 1% |
| Agriculture | 1 | 1% |

How does this business affect your quality of life or property values?



The respondents were given the opportunity to provide open-ended responses to guide the ordinance update process. A broad range of opinions are evident, although a majority of responses state that home occupations are overall positive for a neighborhood, as long as certain conditions are met to limit the impact on neighbors. A significant minority of respondents favor home occupations with no restrictions. A small number of respondents favor prohibition of home occupations in residential areas.

The following specific factors to consider in an ordinance were raised by respondents:

- Daytime hours of operation
- Noise
- Parking on the site
- On-street parking - over winter months
- Duration of on-street parking (pick-up vs all day)
- Number of employees
- Gross weight of equipment
- Landscaped buffers
- Light pollution controls
- On-site retail
- Customers per week
- Fire code inspections
- Outdoor storage screening
- Activities that generate traffic
- Number of business vehicles
- Sight distances at intersections
- Residential aesthetics
- Control of trash/litter
- Chemical dumping
- Alcohol, tobacco, and firearms

Open-ended responses are provided below with minimal editing:

Is there anything you'd like to tell us about regulating business activity in Bismarck residential areas?

Makes the road very dangerous in our situation there is constantly a bit trailer or a garbage trailer parked on the street. We call the city but nothing changes. We are thinking of moving because of this neighbor.

I think business activity is great based on the business. One to two customers is not a problem; more than that during the hours of 6-10 pm may become annoying.

I think residential zoning, especially single-family zoning, should be abandoned in favor of up-zoning our city neighborhoods to hopefully slow the suburban sprawl that is unsustainable

and counterproductive to a vibrant, functional city.

Noise ordinances should be heeded as well as parking (including long term vehicle/trailer) parking should be equally enforced for personal or commercial use, including notices for "winter" parking in the fall. As an example, BPD was in force on our street tagging RV's and boats with notices they will be towed prior to the winter, but two contractor's trailers were not and remained for weeks and had been there longer than some of the tagged RV's and boats. One was a contractor that lives on the street and another had been there all summer.

Any existing, modified or new rules and ordinances needs to be equally enforced be it homeowners, on-site contractors, contractors operating from home or other businesses operating from home.

We are in an era where people can and should make money from home. Let's not stymie their efforts. It is worth noting, I do not have a business operating from home, but feel people should be encouraged to do so.

Less regulation is always better. Every situation should be handled on a case-by-case basis. Most business owners will be responsible and do what they can to be a positive impact to their neighbors.

Business owners pay taxes and spend money in our community. Regardless of where they do it from. In the days of nomadic work opportunities they can work from anywhere. Make it hard for them here they could and would easily relocate to a place that allows them to thrive.

Many contractors can't afford another property if they are self-employed or have very few employees. Have it based on employee numbers and gross weight of equipment or type of equipment. Nothing viewable from the public right of way.

Low traffic small businesses in residential areas is one thing. Having vehicles frequent the area and strange people in and out is a problem. I had a home daycare and that is one business that families in the area liked having close to them. Other types of businesses are questionable. The purpose of living in an area like ours is for the distance from others and to avoid the commotion of commercial areas. We live here for the peace and quiet. One nearby neighbor repairs vehicles in his shop. They frequently have people to their house, and that is something I would prefer they not do. It is a

bother when people park on the road anywhere in our area, because it creates a bottleneck for traffic, which is a hazard, especially on hills.

Don't let cell phone towers be built 15 feet from residential and mixed-use lots when they could easily be placed on top of a commercial building, out in the ditch on I-94, or at a substation a few blocks away. It is so embarrassing that the City admitted to the Tribune that they didn't keep an inventory of cell phone towers inside the city limits.

I think just because the scores are negative doesn't mean they are necessarily bad. I think if the question was asked about anything with too much commotion next door would provide a negative response. I would think the biggest issue with each of these is the respect that's provided by each business and their patrons to your residence. Although I put negatives for each response I still think enabling individuals to make a living while reducing unneeded brick and mortar stores is good as it may help reduced urban development.

Please encourage mixed uses.

It does not belong in or near a 1-mile radius of housing period

We live in the Hay Creek Park area where to the East of us is an industrial area, CK Auto, etc. As a City, we need to consider the impacts of industrial areas that are adjacent to single family homes as a result of poor City planning. What limits on building elevations, implementing buffers such as wooded areas, and light pollution controls can be considered for future zoning efforts and improvements to current zoning.

Soft businesses such as home day care, are very different from business operations. Residential areas should remain Residential.

Not more than 1 employee

No retail or sales

Not more than 10 customers per week

Stay out of it. Focus on getting property taxes under control and reduce spending. That is a much higher priority.

Shop condos can be for these types of activities.

It helps the community at large, as long as businesses are following all city regulations regarding lawns, street parking, etc.

there's already too much regulation regulate anymore. No one could afford to compete with big business.

I would be concerned about the additional traffic on the street. I live on a cul-de-sac so any additional traffic is noticeable and makes a difference to limited on-street parking.

In an era when government can shut down the economy, restricting home-based businesses would be immoral and counter-productive to economic development goals. The city should look at how to make it easier to operate businesses out of homes, not harder.

The scenarios above are not all so terribly bad but you also have people running plasma tables, powder coat ovens, and metal fabrication out of their garages in residential areas. Those pose more fire hazard and well honestly makes it tough as a real business with overhead trying to survive. The guy with the woodwork maybe the closest to that scenario but you but you list it on a small hobby scale so that impact is smaller.

Forced separation of business and residential areas is not conducive to my lifestyle. I have no vehicle, and businesses within walking

distance, and a vibrant, busy community, would only serve to improve my quality of life. I want houses stacked on top of every shop in town and I want to live in those houses.

Keep residential areas residential for homeowners. Self-employed businesses, retail and commercial businesses do not belong in residential neighborhoods/areas. Even the new trending "professional office buildings" designed to look like single family homes do not belong in residential areas/neighborhoods.

There is zero need to regulate it

It should be limited to those businesses that have a minimal impact on neighbors. We have a lawn/snow removal business a few houses from us that parks equipment on the street. We also have a neighbor that works at a recreational vehicle dealer that parks trailers with inventory in front of our house and when doing so, he damages the trees on the boulevard. We also have a daycare where parents park and block our driveway when dropping off and picking up kids. All of these activities cause noise and take away from the residential quality of our neighborhood.

None of your business. It's our right to use our properties as we see fit. Stop taking our rights away.

Noise is a main concern. Peace and quiet are needed for homeowners. That's why there are noise regulations. Lack of parking space due to single stall garages on this particular street would be a big problem also. Not conducive for businesses.

Remove out of state interests from owning and renting land or equity.

Depends on the business!

Most of my concerns with the above scenarios would be with noise or the materials that may

be on the property. It would be with the amount of parking they would take up on the street.

Most home businesses in rural subdivisions are mostly hidden and well taken care of by the business owner. It's nice having a contractor to call if help is needed, and a landscaper if needed. The only people bothered by these businesses in rural subdivisions have too much time on their hands and want to be in everyone else's business.

With the rising cost of living and real estate, businesses should be encouraged to make the most use out of the available space. Small businesses are an essential part of the community and as a community we need to support them whenever possible.

Let them be. They are trying to make a living just like everybody else. Why make a stink about it?

Small businesses are a staple to any community. It is nice to know that you have someone reliable down the street you can go and ask for advice or help.

I don't care what people do inside their home/garage. Extra traffic to the home should be very limited. There also should be restriction on activity that increases traffic and parking on a street to more than what would be expected of a single-family home.

I would allow licensed home-based day cares to be an exception to the traffic restrictions since the societal need is so high that it outweighs the negative neighborhood impacts.

I think it is up to the homeowner whether they would like to operate a business out of their home or not. They should be encouraging people to be entrepreneurs and to do the best they can for their families. At least they have a job and aren't relying on the government for all

of their bills. As long as the business is not affecting neighbors I don't see any issue with it.

Small businesses should NOT be regulated in rural residential areas.

How would running a professional business out of someone's home negatively affect a neighborhood?

How can you possibly regulate what people are doing? We have such a need for daycare, are you going to shut them down? How can you allow one type of business to operate out of a house and not another, that would be discrimination. You want people to work and support the economy, but not out of their home. Doesn't sound right.

The law should be designed to allow people to run a small business out of their homes. A huge part of our economy comes from just such small businesses. And the people who run them are good people, helping the community.

It is their property and if they want to use it to make income I don't have a problem with it as long as the yard still looks decent.

No. I feel there is typically minimal impact on neighbors.

I think it is unfair that you pick and choose what small businesses are able to operate out of their homes. There are no negative impacts on the City or the neighborhoods so let them work and operate their businesses out of their home

I think when someone operates a business out of their home they can only be allowed one business vehicle to be at the residence.

As far as employees gathering at a home, it can feel uncomfortable. They (employees) may not have had background checks and it's uncomfortable having strangers knowing your daily routines because they are in your

neighborhood on a daily basis for work. Also, we need stricter rules for vehicles being parked on streets for an extended period of time and noise violations. :)

Visually pleasing such as fences to contain business items. Street parking allowed for immediate property line and across street as long as mail and garbage not hindered. Encourage more off-street parking, parking slab adjacent to property.

As long as they don't take up ample street parking for multiple hours during the day it's OK with me.

Give tax incentives and refunds to small businesses operating in the Bismarck/Mandan metropolitan area and utilize our taxes wisely instead of recording a 170 million dollar surplus and raising the local and county taxes and not disclosing what it will be spent on.

Encourage them!!! Please LOWER their taxes- it's killing their businesses!

Government overreach is driving the cost of services up and although some regulation is appropriate it needs to be as minimal as possible so that the community and free market can thrive unhindered.

You don't need to control what everyone does if it isn't illegal.

Not sure if there is a home-based business as such that you have listed in the survey. Should have a choice of Maybe or not sure.

We live next door to a landlord who rents out the house to UMary football players and the polebarn to a man who owns an excavation business. This would be considered a commercial property since he's renting out to two different people on the same lot but our neighborhood is residential. We have complained to the city numerous times, but you

don't do anything. We don't mind the football players but do mind the excavation business as the polebarn is right next to our house and he brings semis and large vehicles in and out. It looks crappy next door, and we don't like the noise. We moved here to be in a residential neighborhood not a commercial property neighborhood.

We are so sick of the noise pollution coming from WBI compressor station on 57th.

The question about a contractor - they will park their big vehicle on the street. We have a neighbor that has a huge trailer, one that holds two snowmobiles, and he parked it on the street. This trailer blocked the intersection. He lives on a corner, so he parked the trailer on the street where he didn't live - nice huh? Asking him to not do this did no good. And the City didn't care either. That's why having anyone with a business that as big equipment would not be beneficial to any neighborhood. Because they would certainly use the PUBLIC street to park their equipment. Not good for snow removal or intersection access.

Not opposed as long as it doesn't start to look like it's not a residential area anymore, with equipment, materials, etc. all over. I think if it's a business being run out of a home, it shouldn't look like it's a business to your neighbors and passerbys.

If they want it to be a full-fledged business and take up more than their reasonable share of parking, store items in visible areas; then rent office, space, a shop, etc.

I think regulating business activity is wise, particularly larger scale businesses that require substantial equipment to operate. Also, any that produce noise or possible disruption to the neighborhood as well. It is imperative that residential areas be safe and not expected to house businesses that would be better suited

for another sector in town (including homeless shelters, soup kitchens, etc).

No, small businesses are a good thing in neighborhoods.

Low impact businesses run out of the home are ok in town. No storage of materials. A daycare or music teacher generally doesn't have more than one or two extra vehicles at a time so it's not a big impact to the neighborhood. Repairing firearms is not a big deal but selling guns and ammo would be a BIG no no in town or in rural subdivisions.

More involved businesses that may require several work vehicles may be ok in rural areas, but storage of materials or additional equipment needs to be limited or completely screened. Once you have more than 1 employee-get a shop so it doesn't burden the neighborhood.

If someone has a legitimate small business registered with the State of ND they should be able to operate it from their home. There are always exceptions, but how and who decides is up for debate. Keep the American dream alive and let's allow home based small businesses to thrive!

Lots of traffic in and out all day but I'm gone working most of the day, so it generally doesn't impact me. They all are gone by 6pm.

I don't see a problem with business activity in residential areas. Let capitalism do its thing.

Businesses should be operated in a commercial zoned area, not in a residential zoned area.

All is good except the boat repair/DJ business. He blasts music that disturbs neighbors. His yard also looks like a junk yard.

I feel in general homeowners should be able to do as they please in their own homes/property. However, if there is potential for injury or harm

to neighbors, or a significant increase in traffic and equipment on the streets, that should be something that is not allowed and the business/home-owner should be renting or buying commercial real estate for their business.

Keep more government out of peoples' lives. What are you trying to do by ruining or making it impossible for small independent businesses from surviving? This will only cause more expense to independent contractors and make it unable to survive if they are forced to get commercial property for these small low-income businesses. Most of these small business are on 2-5 acre lots and have vegetation between one another that it doesn't affect others around them. Government regulation ruins this opportunity for independent contractors that do much service for commercial businesses such as snow removal lawn mowing etc. that need just a shop to store their equipment so it can be ready to go after a snowstorm or kept out of the elements that cause damage or theft. Keep government regulation out of it. Lawn mowing contractors can't afford to have commercial space either and adding costs of doing service for your office complexes will skyrocket if this is forced on small business owners

It's disruptive to neighborhoods when there's a business with several employees coming and going from the home business throughout the day and neighbors don't know if employees can or can't be trusted at the same level as their neighbors.

Is no different as if somebody would have people over for the holidays or a gathering at their house for a birthday party for small business owners running a business out of their house cuz most of the cars for small business are gone and not staying real long. On the street that I live on on the block I'm on the neighbors are all aware of the two businesses

and are fine with it and everybody has an understanding.

Let the subdivision covenants dictate the use of property not the government. There are plenty of other homeowners in rural subdivisions that don't have a business and the property looks as if they do. That's why people choose to live in those areas, to own larger property that they can do with as they please. If North Dakota is all about helping the rural small businesses then they should let that happen instead of hindering their activity. Shop local is the slogan.

As long as they don't create an eyesore or become a nuisance due to noise, I believe they should operate as they wish, especially outside the city limits.

Small businesses can bring great things, even to residential areas.

Need for quarterly review that no additional buildings added to property for storage

I love to support small business in Bismarck home based or otherwise. Having someone closer than running into town is a huge bonus for me and my family both. I think that as long as they aren't creating noise issues or making property look unruly that they should be allowed.

Keep small businesses.

Neighbor mentioned above is in violation. No one does anything. We look at wrecked cars and junk yard every day. Maintain speed limit control and put limitations in place and enforce but let small businesses exist within reason. Noise control too.

Small businesses are just that. They need the opportunity to start somewhere and be small. Some people don't have the capital to start their business and right away act like a big business with offices, shops, ect. Give entrepreneurs a

chance at becoming something great and productive for society. Many big businesses have small business roots and hampering the start of growth will hurt future jobs, city revenue and customers who save money that can't pay the big business rates for services. Jobs will be lost if small business like these have to close their doors.

The businesses in our area do not affect the quality of our life.

Any business should not negatively impact its neighbors. Junk appliances and or vehicles should not be stored on RR property.

Thank you

We want more small businesses, and they need to start in the home. It really is none of the city's business. If one person complained and 99 others didn't, majority should rule!!!

No, leave them alone they are helping the community.

I don't think there should be limitations on in home daycares more than there is already as it is already very difficult to find childcare. The most impact a daycare has in a neighborhood would be during drop off and pick up times however it's no different than a resident having a gathering at their home with multiple people.

[Name Redacted] has a daycare and she is great

Mind your own business unless it has a negative impact on other landowners such as high traffic / noise outside of normal operating hours.

Businesses, regardless of size or type, should not be allowed in single family residential neighborhoods. Any business that increases people or motor vehicle traffic in a residential neighborhood should be required to be located

in an appropriately zoned district. No exceptions or middle of the road exceptions.

People should mind their own business and just keep a nice yard. To many people complaining about what the next person has and then the go with those few people's opinion.

What people do for work on their own property is none of the city or state's business.

Let the covenants and HOAs dictate the use of homes for a business. Taking away opportunities from entrepreneurs not only hurts the city of Bismarck's economy, but it goes against "shop small" or "shop local". This also makes Bismarck less desirable to raise a family, as well as creates a bigger divide now within communities in our city. Bismarck used to have a small-town community feel, but more recently legislation has been stripping us of that and our freedoms.

Requirements to keep things neat and no trash laying around to blow

As long as traffic on roads isn't an issue and the places are kept up I don't have an issue.

Proper screening of the activity or enclosure is helpful. A landowner may have 4 trailers in their back yard in a rural home even without a home-based occupation so it seems punitive to require all areas be screened. There is a threshold where that activity would no longer have the neighborhood support. That threshold is likely tied to the activity occurring on site and whether that activity is noticeable (someone working in their shop not as disruptive if it is all self-contained, different story if there are 10 cars that are the "next" projects or building materials strewn about the property). Allowing work inside a contained area likely contributes positively to the neighborhood if it is the catalyst that supports the construction of a \$100,000+ structure which increases the tax base.

Small business owners are the backbone of America. A person has a right to earn a living so long as they are not negatively affecting their neighbors.

I feel residential businesses are a great way to do the jobs you love without having a lot of overhead. Working from home has become a very popular way to work. If this was taken away, I believe a lot of those businesses would close and leave the employees and owners jobless. We don't need any more jobless people. Trying to stop people from having a business at their own home is ridiculous. I do not agree with this at all, if people want to work and run a business out of their home that they pay for, let them. Today no one wants to work, why try to stop the people who do want to work? This makes no sense at all.

As long as there is not excessive noise pollution, chemical dumping, and the property is well kept I have no issues.

I would think that firearms dealers should be in a business district because there could potentially be a daycare or a school right next to the business. Likewise with a smoke or CBD shop, coffee shop/food truck selling in neighborhood house/driveway.

I appreciate that the City's watching out for residents and potential misuse of the zoning ordinance

It would be great to see more neighborhood amenity commercial spaces on the corner of major streets in all residential areas limited to coffee shops, bistros and restaurants and never operating beyond 9 pm in the winter and 10 in the summer. Other conditions should include no parking allowed so that people are forced to use this as a neighborhood walkable amenity.

I would worry about the drug dealers all over than anything else.

If there is going to be constant noise, a lot of foot traffic or parking required, or hazardous chemicals/processes like fire or extreme cold, those kinds of businesses should not be allowed in residential areas. But I'm all for allowing as much home business as possible because everyone should be able to make money from home.

There's already such high property taxes that it makes sense to work from your home when feasible rather than renting elsewhere for business. It would render it even less affordable to be self-employed. As long as noise restrictions and the standards of the condition of the home etc. are adhered to, it has little to no impact on the neighborhood. It also has the potential for higher productivity during winter weather if a commute is not needed. I've had plenty of neighbors over the years with multiple junker cars being worked on in the driveway for personal use etc. running a business from a home is less impactful than that, in my opinion.

If the business can keep items from cluttering the front yard, driveway, or street then I see no issues to the neighborhood. I think the curb appeal is what matters most to me and my view of the neighborhood. If the business has an accessory building for storage or the business then I am okay with whatever the business may be. I'm not sure how noise plays into this, but I wouldn't want to see a business that generates noise from 10 pm to 6 am.

Workers leave vehicles behind and take work vehicles to job sites taking up parking. Job vehicles take up tons of street parking and impact snow removal. Equipment and material are displayed stored outside for long periods of time at both locations.

Surprised the city would conduct a survey like this. You allowed a business park to be developed in what was promised as a

residentially development...Boden Addition! That would be a -4 negative affect.

No guns, no bars, no smoke shops or other questionable or hazardous businesses mixed in residential areas. People that make and sell items online would not be an issue.

Residential in town is alot different then residents out of town. Having a bobcat, tractor trailer etc. are commonly owned by us anyway to move snow and do yard work. Most of the time we help our neighbors out with snow removal with the equipment that we use every day to make a living. I think we have the right to have and operate a small business out of the home.

Big trucks, big equipment, and stockpiles of materials don't belong in residential neighborhoods in city limits.

Consider noise level, parking impact. - short term to pick up child not as impactful as cars parked all day, storage of items - all should be inside shop or garage except for short periods.

I think the city needs to tread lightly on homeowner rights as private property owners especially in the Rural residential areas. The businesses I have listed above have been very beneficial to our rural subdivision in the ET. Examples operators in the neighborhood watch some of our younger kids for families in the who work making it easily accessible for their children. Also the children are typically familiar with a neighborhood business owner as they are our neighbors. The lawn care and snow removal guys help keep our streets open for fire and rescue as well as those in our neighborhood who are considered essential works. We sometimes go several days without a plow, so our small business owners help with keeping a lane open during these weather events to assist essential workers to get out of developed to the highway to get to their

essential job. This has been helpful for first responders in cases where they need to get into our development during an emergency.

Small business should be encouraged as long as the yard is clean and maintained and equipment is kept off the streets

The city should not be able to regulate what we do in the county - we don't get any city benefits, and we don't vote for city representatives, so they shouldn't have jurisdiction over what we do in the county as far as businesses. Also a small business in the middle of the suburbs is a lot different than a small business in an area where people have land and acreage and space - much less impact on others. I think you also strongly have to consider the rights of property owners to do what they want on their own property.

Stay the hell off our property and worry about fixing the streets and issues we pay you to do and NOT invent new ways to attempt to control private business.

Worry about potholes and not some gal selling her pottery out of her own home.

Bismarck is one of the nicest cities because we don't build business next to neighborhoods

Drive around Minot. It looks terrible because of their zoning. Many neighborhoods have become dumps because of it. Keep industrial away from homes. The land on South 12th and Burleigh that's for sale should NOT be sold as industrial. Way to ruin the area.

Allow home based Business to operate from their home. Small business is key to healthy economy. Overall I've found home businesses to be a positive in my neighborhood. It's always a plus to know people with knowledge and skills for projects at your own house. I've hired 3 of my neighbors on several occasions!

I find that what my neighbors choose to do out of their own home is none of my business and has little to no impact on my own life. Anybody should be allowed to run their small business out of their home within reason.

Residential Business is a great way to start small and how most company started. do not make it harder for people to start something that they are passionate about.

Any business that isn't retail should be allowed as long as all business-related activity occurs on their property. Parking business related vehicles/equipment on the public streets near the property should be allowed. No businesses that regularly uses dangerous chemicals or produces sound or dust pollution should not be allowed.

The impact is from extra traffic potentially speeding on the road. If speed limits are posted (and enforced), it would minimize the impact.

In the above scenarios, there is a concern of parents/teens driving too fast for the neighborhood as they rush to and from appointments. Obviously, this is dependent on the habits of individual drivers.

Anything leading to storage of extra vehicles, campers, building materials etc... should only be allowed in industrial areas and should not be allowed in residential neighborhoods.

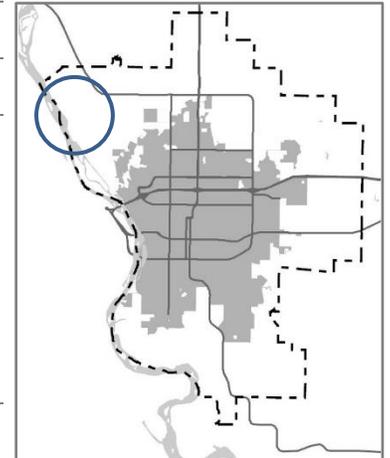
As a Bismarck resident for many years, home businesses don't seem have a negative impact and don't affect others as long as the noise level, street parking etc. are within reason. Homeowners should have the freedom to decide whether or not they should run a business from home

Allowing more mixed-used and neighborhood commercial within restricted guidelines.

We should ban all working out of residential homes. I have several neighbors who work from home and also a daycare with almost 10 kids. This must all be banned. Some of this activity is very hard to detect and the city needs to do more investigation. I think a group of retired people could start a task force looking for violations and reporting to the city for prosecution. The city should also add an online form to report violations.

Project Summary

| | |
|------------------------------|--|
| <i>Title:</i> | Misty Waters, Lots 30-36 and 38-39, Block 1 |
| <i>Status:</i> | Planning and Zoning Commission - Public Hearing |
| <i>Property Owner(s):</i> | Nancy Volk (Lot 30) Dustin and Holly Seibel (Lot 31) Scott and Tegan Schumacher (32) Hanes and Teresa Reis (Lot 33) Nicole Perreault (Lot 34) Alexander Dahl and Kayla Gradin (Lot 35) Jason and Krysta Sellers (Lot 36) Eric and Sarah Volk (Lots 38-39) |
| <i>Project Contact:</i> | Michael Gunsch, PE, CFM, Houston Engineering |
| <i>Project Location:</i> | Northwest of Bismarck, west of River Road along the west north-south portion of Burnt Creek Loop |
| <i>Project Size:</i> | 4.8 acres |
| <i>Applicant Request:</i> | Amend PUD for Lots 30-36 and 38-39 to identify the interior edge of the platted 20-foot drainage easement as the rear yard setback from the bay |
| <i>Staff Recommendation:</i> | Approve |



Site Information

| <i>Existing Conditions</i> | | <i>Proposed Conditions</i> | |
|----------------------------|--------------------------------|----------------------------|--------------------------------|
| <i>Lots/Blocks:</i> | 9 lots in 1 block | <i>Lots/Blocks:</i> | 9 lots in 1 block |
| <i>Land Use:</i> | Single-family | <i>Land Use:</i> | Single-family |
| <i>Future Land Use:</i> | Rural Residential (RR) | <i>Future Land Use:</i> | Rural Residential (RR) |
| <i>Zoning:</i> | PUD – Planned Unit Development | <i>Zoning:</i> | PUD – Planned Unit Development |
| <i>Uses Allowed:</i> | PUD – Uses specified in PUD | <i>Uses Allowed:</i> | PUD – Uses specified in PUD |
| <i>Max Density:</i> | PUD – Density specified in PUD | <i>Max Density:</i> | PUD – Density specified in PUD |

Area Information

Property History

| | | | |
|-----------------------------|-----------------------------|-----------------|---------|
| <i>Zoning Jurisdiction:</i> | Extraterritorial Area (ETA) | <i>Zoned:</i> | 05/2005 |
| <i>Township:</i> | Hay Creek (organized) | <i>Platted:</i> | 05/2005 |
| <i>Neighborhood:</i> | Misty Waters | <i>Annexed:</i> | N/A |

Project Narrative

The owners of Lots 30-36 and 38-39, Block 1, Misty Waters Subdivision are requesting approval of a Planned Unit Development Amendment (PUDA) that would identify the interior edge of the platted 20-foot drainage easement on their properties as the rear yard setback from the bay. A site exhibit identifying this setback is attached for your review.

The Planning and Zoning Commission considered the proposed PUDA at their May 22, 2024 meeting and called for a public hearing on this request.

Background Information

The original PUD for Misty Waters was adopted in June 2005 and identified the rear yard setback as

30 feet. The PUD was amended in August 2006 to alter the setback to an elevation of 1640.3 feet as delineated by the contour line described in a Letter of Map Revision (LOMR), which was approved by the Federal Emergency Management Agency (FEMA) in 2005.

A recent North Dakota Supreme Court ruling determined this LOMR was to function as the setback from the bay. As such some properties within Misty Waters encroach on this line. The proposed amendment would resolve this encroachment for the above referenced lots.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:

A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.



The property has been identified as Rural Residential (RR) in the Future Land Use Plan. The RR areas are places for country living with convenient proximity to city life. Goals and objectives of this plan as they relate to the PUDA are referenced in review standards below.

Public Engagement

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 14 and June 21, and 145 letters were mailed to owners of nearby properties on June 14, 2024.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Together 2045 Bismarck’s Comprehensive Plan is adhered to with the proposed Planned Unit Development ([Section 14-04-18\(3\)a](#))

Yes. The following objectives of the plan would be advanced through the amended planned unit development.

S9: Provide the means for adaptation of the built environment to meet complex and changing economic and social demands:

e) Evaluate requests for amendments to plans, ordinances, and the zoning map based on a change in conditions since the last action was taken.

A recent North Dakota Supreme Court ruling determined that a FEMA approved LOMR was to function as the setback from the bay. As such some properties within Misty Waters encroach on this line. The proposed amendment would resolve this encroachment for the above referenced lots.

Adequate buffer areas have been provided between any noncompatible land uses ([Section 14-04-18\(3\)b](#))

Yes. There are no uses adjacent to this amended planned unit development that are incompatible and require a buffer.

Natural features of the site would be preserved, insomuch as possible, including the preservation of trees and natural drainage ways ([Section 14-04-18\(3\)c](#))

Yes. Misty Waters includes a bay with an outlet to the Missouri river. Both the bay and outlet are utilized by the public and property owners within Misty Waters. The amended planned unit development would not modify these existing natural features but would identify the interior edge of the platted 20-foot drainage easement on their properties as the rear yard setback from the bay.

The internal roadway circulation system within the planned unit development has been adequately designed for the type of traffic that would be generated ([Section 14-04-18\(3\)d](#))

Yes. The proposed planned unit development is served entirely by existing public rights-of-way without need for an internal circulation system.

The character and nature of the proposed planned unit development contains a planned and coordinated land use or mix of land uses that are compatible and

(continued)

harmonious with the area in which it is located ([Section 14-04-18\(3\)e](#))

Yes. The current PUD allows for a mix of single, two and multifamily uses, and commercial uses. The proposed amendment would not modify these uses.

Proper administrative procedures related to the request are being followed ([Section 14-04-18](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a planned unit development amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the major Planned Unit Development Amendment as outlined in the draft amendment document.

Attachments

1. Draft PUD Amendment Document
2. Zoning and Plan Reference Map
3. Written Statement
4. Site Exhibits

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov

**MISTY WATERS PLANNED UNIT DEVELOPMENT
ORDINANCE NO. 5435 (Adopted June 14, 2005)
MAJOR PUD AMENDEMNT (Adopted August 23, 2006)
MAJOR PUD AMENDMENT (Adopted October 25, 2017)
MAJOR PUD AMENDMENT (Adopted October 28, 2020)
MAJOR PUD AMENDMENT (Adopted August 23, 2023)**

WHEREAS, Ordinance No. 5435 was adopted by the Board of City Commissioners on June 14, 2005; and

WHEREAS, Ordinance No. 05-03 was adopted by the Board of County Commissioners on June 6, 2005; and

WHEREAS, Section 1(2) of both ordinances indicates that this PUD shall only be amended in accordance with the provisions of Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments); and

WHEREAS, the PUD was amended on August 23, 2006 **at by** the Misty Waters LLC to modify the location and density of residential uses, the location of commercial uses, and the setback around the bay; and

WHEREAS, the PUD was amended on October 25, 2017 to clarify language relating to multi-family residential development within the PUD; and

WHEREAS, The PUD was amended on October 28, 2020 to replace multi-family residential uses within a portion of the development with single-family uses for Lot 84, Block 1 and Lot 40, Block 3 replatted as Lots 1 and 2, Misty Waters First Replat,

WHEREAS, Lot 2, Block 1, Misty Waters **is being was** replatted as Misty Waters Second Replat, a 2 lot 1 block subdivision, and PUD amendment to remove multi-family uses within the replatted area and allow self-storage uses on Lot 1, Block 1, Misty Waters Second Replat.

NOW, THEREFORE, BE IT RESOLVED by the Bismarck Planning and Zoning Commission of the City of Bismarck, North Dakota, a municipal corporation, that the request to amend the Planned Unit Development for the following described property:

Lots 1-83, Block 1; Lots 1, Block 2; Lots 1-39, Block 3; and Lot 1, Block 4; Misty Waters and Lots 1-3, Block 1; Lots 1-3, Block 2, Misty Waters First Replat and Lots 1-2, Block 1, Misty Waters Second Replat

is hereby approved and this PUD is now subject to the following development standards:

1. Uses Permitted. Uses permitted include a maximum of 129 residential units (121 single-family residential units and up to 30 two-family residential

units) to be constructed in condominium associations with two units per building or as twinhome/townhouse projects with mutual easements and obligations with two units per building; water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/convenience store with a two-bay boat repair facility, and a restaurant/bar; marina parking facilities; parking facilities for winter storage of marine boats and pontoons; and a public boat ramp with parking to be deeded to Burleigh County. Any change in the proposed uses within the PUD from that indicated herein will require an amendment to this PUD.

2. *Single-Family Residential Development Standards.* Single family residential development shall be located on Lots 2–81, Block 1 and Lots 2- 37, Block 3, Misty Waters and Lots 1-3, Block 1 and Lots 1-3, Block 2, Misty Waters First Replat 121 lots with one dwelling unit per lot); the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 40 feet on Burnt Creek Loop, 35 feet on Misty Waters Drive and 25 feet on the other interior roadways; the minimum side yard setback shall be 10 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100 feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR **for all lots within Misty Waters with the exception of Lots 30-36 and Lots 38-39, Block 1, Misty Waters. The minimum rear yard setback for Lots 30-36 and Lots 38-39, Block 1, Misty Waters shall be the interior edge of the platted 20-foot drainage easement;** the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 30%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

3. *Multi-family or Two-family Residential Development Standards.* Multi-family or two-family residential development shall be located on all of Lots 82-83, Block 1, and Lots 38-39, Block 3 (separate parcels with the option of a separate condominium-association for each parcel or a twinhome/townhouse project with mutual easements and obligations for each parcel and with up to fifteen buildings with no more than two units in each building); the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 35 feet; the minimum side yard setback shall be 15 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100

feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 40%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

4. *Commercial Development Standards.* Commercial development shall be located on Lot 2, Block 1, Misty Waters Second Replat and shall be limited to water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/ convenience store, a two-bay boat repair facility, and a restaurant/bar. The minimum front yard setback shall be 40 feet; the minimum side yard setback shall be 20 feet; the minimum rear yard setback shall be 30 feet; the maximum building height shall be 35 feet; and the maximum lot coverage shall be 70%. Commercial building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Parking areas for commercial uses shall be provided in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on the square footage and uses. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. Any change to the uses or building setbacks that are inconsistent with these standards will require an amendment to this PUD. Any activities requiring a special use permit, such as gas dispensing/filling station or liquor sales, shall be subject to the requirements of Section 14-03-08 of the City Code of Ordinances (Special Uses). Any liquor sales will also be subject to the standards agreed to by Burleigh County and the developer in conjunction with liquor licensing.

5. *Marina Parking Facilities.* Marina parking facilities, including parking facilities for winter storage of marine boats and pontoons, shall be located on Lot 1, Block 1, Misty Waters in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on a ratio of one parking space per 1.5 boat slips. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. A marina restroom and concession facility may be constructed on Lot 1, and each shall be no larger than 500 square feet in area, no more than one story in height, be architecturally similar to other commercial buildings in the development and be subject to the same development standards as outlined for commercial uses. Any changes to the location of marine parking facilities will require an amendment to this PUD.

6. *Public Boat Ramp.* A public boat ramp and parking facilities shall be located on Lot 1, Block 4, Misty Waters. Said boat ramp and parking facilities shall be developed in accordance with the agreement between the Developer and Burleigh County. Upon conveyance of the property to Burleigh County, the County may construct other complementary facilities, such as restrooms, fish cleaning stations, and picnic shelters.

7. *Storage Uses.* Self-storage development shall be located on Lot 1, Block 1, Misty Waters Second Replat and shall be limited to seven buildings, no more than two stories in height and comply with the following use standards:

- a. Commercial (including offices), residential, and assembly uses are prohibited within storage buildings/units, except for up to 2 units in the southwestern most building. These units may be used for marina operations, watercraft winterization and minor maintenance of watercraft.
- b. Fixtures commonly associated with bathrooms, kitchens, offices and bedrooms are prohibited, with the exception of no more than 1 toilet and 1 sink, in each storage unit.
- c. Floor drains are permitted in each unit.
- d. Water may be installed to one common exterior location for watercraft maintenance.

8. *Design and Aesthetic Standards.* The following design and aesthetic standards shall apply to all structures located on Lot 1, Block 1, Misty Waters Second Replat:

- a. *Intent.* It is the intent of the design standards to create and maintain a high visual quality and appearance for this development, encourage architectural creativity and diversity, create a lessened visual impact upon the surrounding land uses, and stimulate and protect investment through the establishment of high standards with respect to materials, details and appearance.
- b. *Building Materials.* All building facades must be designed primarily with architecturally finished materials.
 - i. Primary building materials are limited to modular masonry materials such as brick, stone or dimensional block; precast concrete or aggregate panels; stucco or stucco-like materials; or prefinished metal architectural panels.
 - ii. The following building materials are expressly prohibited: wood as an exterior wall finish, except where used as an accent material; and exposed, untextured, uncolored, unaugmented concrete, including poured in place, pre-cast concrete panels and concrete block.

- c. *Lighting.* All exterior lighting shall be designed and installed in a manner intended to limit off-site impacts to adjacent residential uses.

79. Signage. Development identification signage may be installed on Lot 1, Block 2, in accordance with the requirements of Section 14-03-05(9) of the City Code of Ordinances (Residential Area Identification Signs). Signage for the commercial uses on Lot 2, Block 1, shall be limited to one pylon sign no more than 35 feet in overall height with a face not exceeding 96 square feet, one monument sign with a face not exceeding 48 square feet, and up to two wall signs per building (one facing the marina and one facing the entrance to the commercial area) in accordance with the provision of Chapter 4-04 of the City Code of Ordinances (Signs and Outdoor Display Structures).

8-10. Landscaping. Landscaping and buffer yards shall be provided in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). The perimeter parking lot landscaping requirements may be modified by the City Forester and/or Community Development Director to recognize the setting of the development and to incorporate deer and drought-resistant plant materials, provided the overall intent of the landscaping requirements, if not the specific plant quantities, are met.

The following landscaping and buffering requirements shall be installed in conjunction with development of Lot 1, Block 1, Misty Waters Second Replat:

1. A 20-foot wide landscaping buffer along the north side of the lot with planting materials and density outlined in Section 14-03-11 of the City Code of Ordinances.
2. A 20-foot wide landscaping buffer along the east side of the lot, within the Burnt Creek Loop right-of-way with planting materials and density outlined in Section 14-03-01 of the City Code of Ordinances.

11. Common Elements. Maintenance of all common elements, including the bay/inlet (Lot 85, Block 1) and open space lots (Lot 1, Block 2 and Lot 1, Block 3), shall be the responsibility of the property owner's association.

12. Lot Modifications. Any subsequent modification of lots shall be subject to the requirements of Section 14-09-02 of the City Code of Ordinances.

13. No-Build Easement. A no-build easement is shown on the face of the plat of Misty Waters over a portion of Lots 1 and 2, Block 1. The intent of this easement is to prohibit construction of structures within this area, as it is part of the Northern Bridge Corridor. The easement reserves the area for the future bridge and related roadways, but does not dedicate the property for this purpose.

14. Changes. This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major

changes require a public hearing and a majority vote of the Bismarck Planning & Zoning Commission.

DRAFT

**MISTY WATERS PLANNED UNIT DEVELOPMENT
ORDINANCE NO. 5435 (Adopted June 14, 2005)
MAJOR PUD AMENDEMNT (Adopted August 23, 2006)
MAJOR PUD AMENDMENT (Adopted October 25, 2017)
MAJOR PUD AMENDMENT (Adopted October 28, 2020)
MAJOR PUD AMENDMENT (Adopted August 23, 2023)**

WHEREAS, Ordinance No. 5435 was adopted by the Board of City Commissioners on June 14, 2005; and

WHEREAS, Ordinance No. 05-03 was adopted by the Board of County Commissioners on June 6, 2005; and

WHEREAS, Section 1(2) of both ordinances indicates that this PUD shall only be amended in accordance with the provisions of Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments); and

WHEREAS, the PUD was amended on August 23, 2006 **at by** the Misty Waters LLC to modify the location and density of residential uses, the location of commercial uses, and the setback around the bay; and

WHEREAS, the PUD was amended on October 25, 2017 to clarify language relating to multi-family residential development within the PUD; and

WHEREAS, The PUD was amended on October 28, 2020 to replace multi-family residential uses within a portion of the development with single-family uses for Lot 84, Block 1 and Lot 40, Block 3 replatted as Lots 1 and 2, Misty Waters First Replat,

WHEREAS, Lot 2, Block 1, Misty Waters is being replatted as Misty Waters Second Replat, a 2 lot 1 block subdivision, and PUD amendment to remove multi-family uses within the replatted area and allow self-storage uses on Lot 1, Block 1, Misty Waters Second Replat.

NOW, THEREFORE, BE IT RESOLVED by the Bismarck Planning and Zoning Commission of the City of Bismarck, North Dakota, a municipal corporation, that the request to amend the Planned Unit Development for the following described property:

Lots 1-83, Block 1; Lots 1, Block 2; Lots 1-39, Block 3; and Lot 1, Block 4; Misty Waters and Lots 1-3, Block 1; Lots 1-3, Block 2, Misty Waters First Replat and Lots 1-2, Block 1, Misty Waters Second Replat

is hereby approved and this PUD is now subject to the following development standards:

1. Uses Permitted. Uses permitted include a maximum of 129 residential units (121 single-family residential units and up to 30 two-family residential

units) to be constructed in condominium associations with two units per building or as twinhome/townhouse projects with mutual easements and obligations with two units per building; water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/convenience store with a two-bay boat repair facility, and a restaurant/bar; marina parking facilities; parking facilities for winter storage of marine boats and pontoons; and a public boat ramp with parking to be deeded to Burleigh County. Any change in the proposed uses within the PUD from that indicated herein will require an amendment to this PUD.

2. *Single-Family Residential Development Standards.* Single family residential development shall be located on Lots 2–81, Block 1 and Lots 2- 37, Block 3, Misty Waters and Lots 1-3, Block 1 and Lots 1-3, Block 2, Misty Waters First Replat 121 lots with one dwelling unit per lot); the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 40 feet on Burnt Creek Loop, 35 feet on Misty Waters Drive and 25 feet on the other interior roadways; the minimum side yard setback shall be 10 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100 feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR **for all lots within Misty Waters with the exception of Lots 30-36 and Lots 38-39, Block 1, Misty Waters. The minimum rear yard setback for Lots 30-36 and Lots 38-39, Block 5, Misty Waters shall be the interior edge of the platted 20-foot drainage easement;** the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 30%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

3. *Multi-family or Two-family Residential Development Standards.* Multi-family or two-family residential development shall be located on all of Lots 82-83, Block 1, and Lots 38-39, Block 3 (separate parcels with the option of a separate condominium-association for each parcel or a twinhome/townhouse project with mutual easements and obligations for each parcel and with up to fifteen buildings with no more than two units in each building); the building corridor shown on the development plan submitted with the original application for a PUD shall be eliminated; the minimum front yard setback shall be 35 feet; the minimum side yard setback shall be 15 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100

feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 40%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

4. *Commercial Development Standards.* Commercial development shall be located on Lot 2, Block 1, Misty Waters Second Replat and shall be limited to water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/ convenience store, a two-bay boat repair facility, and a restaurant/bar. The minimum front yard setback shall be 40 feet; the minimum side yard setback shall be 20 feet; the minimum rear yard setback shall be 30 feet; the maximum building height shall be 35 feet; and the maximum lot coverage shall be 70%. Commercial building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Parking areas for commercial uses shall be provided in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on the square footage and uses. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. Any change to the uses or building setbacks that are inconsistent with these standards will require an amendment to this PUD. Any activities requiring a special use permit, such as gas dispensing/filling station or liquor sales, shall be subject to the requirements of Section 14-03-08 of the City Code of Ordinances (Special Uses). Any liquor sales will also be subject to the standards agreed to by Burleigh County and the developer in conjunction with liquor licensing.

5. *Marina Parking Facilities.* Marina parking facilities, including parking facilities for winter storage of marine boats and pontoons, shall be located on Lot 1, Block 1, Misty Waters in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on a ratio of one parking space per 1.5 boat slips. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. A marina restroom and concession facility may be constructed on Lot 1, and each shall be no larger than 500 square feet in area, no more than one story in height, be architecturally similar to other commercial buildings in the development and be subject to the same development standards as outlined for commercial uses. Any changes to the location of marine parking facilities will require an amendment to this PUD.

6. *Public Boat Ramp.* A public boat ramp and parking facilities shall be located on Lot 1, Block 4, Misty Waters. Said boat ramp and parking facilities shall be developed in accordance with the agreement between the Developer and Burleigh County. Upon conveyance of the property to Burleigh County, the County may construct other complementary facilities, such as restrooms, fish cleaning stations, and picnic shelters.

7. *Storage Uses.* Self-storage development shall be located on Lot 1, Block 1, Misty Waters Second Replat and shall be limited to seven buildings, no more than two stories in height and comply with the following use standards:

- a. Commercial (including offices), residential, and assembly uses are prohibited within storage buildings/units, except for up to 2 units in the southwestern most building. These units may be used for marina operations, watercraft winterization and minor maintenance of watercraft.
- b. Fixtures commonly associated with bathrooms, kitchens, offices and bedrooms are prohibited, with the exception of no more than 1 toilet and 1 sink, in each storage unit.
- c. Floor drains are permitted in each unit.
- d. Water may be installed to one common exterior location for watercraft maintenance.

8. *Design and Aesthetic Standards.* The following design and aesthetic standards shall apply to all structures located on Lot 1, Block 1, Misty Waters Second Replat:

- a. *Intent.* It is the intent of the design standards to create and maintain a high visual quality and appearance for this development, encourage architectural creativity and diversity, create a lessened visual impact upon the surrounding land uses, and stimulate and protect investment through the establishment of high standards with respect to materials, details and appearance.
- b. *Building Materials.* All building facades must be designed primarily with architecturally finished materials.
 - i. Primary building materials are limited to modular masonry materials such as brick, stone or dimensional block; precast concrete or aggregate panels; stucco or stucco-like materials; or prefinished metal architectural panels.
 - ii. The following building materials are expressly prohibited: wood as an exterior wall finish, except where used as an accent material; and exposed, untextured, uncolored, unaugmented concrete, including poured in place, pre-cast concrete panels and concrete block.

- c. *Lighting.* All exterior lighting shall be designed and installed in a manner intended to limit off-site impacts to adjacent residential uses.

79. Signage. Development identification signage may be installed on Lot 1, Block 2, in accordance with the requirements of Section 14-03-05(9) of the City Code of Ordinances (Residential Area Identification Signs). Signage for the commercial uses on Lot 2, Block 1, shall be limited to one pylon sign no more than 35 feet in overall height with a face not exceeding 96 square feet, one monument sign with a face not exceeding 48 square feet, and up to two wall signs per building (one facing the marina and one facing the entrance to the commercial area) in accordance with the provision of Chapter 4-04 of the City Code of Ordinances (Signs and Outdoor Display Structures).

8-10. Landscaping. Landscaping and buffer yards shall be provided in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). The perimeter parking lot landscaping requirements may be modified by the City Forester and/or Community Development Director to recognize the setting of the development and to incorporate deer and drought-resistant plant materials, provided the overall intent of the landscaping requirements, if not the specific plant quantities, are met.

The following landscaping and buffering requirements shall be installed in conjunction with development of Lot 1, Block 1, Misty Waters Second Replat:

1. A 20-foot wide landscaping buffer along the north side of the lot with planting materials and density outlined in Section 14-03-11 of the City Code of Ordinances.
2. A 20-foot wide landscaping buffer along the east side of the lot, within the Burnt Creek Loop right-of-way with planting materials and density outlined in Section 14-03-01 of the City Code of Ordinances.

11. Common Elements. Maintenance of all common elements, including the bay/inlet (Lot 85, Block 1) and open space lots (Lot 1, Block 2 and Lot 1, Block 3), shall be the responsibility of the property owner's association.

12. Lot Modifications. Any subsequent modification of lots shall be subject to the requirements of Section 14-09-02 of the City Code of Ordinances.

13. No-Build Easement. A no-build easement is shown on the face of the plat of Misty Waters over a portion of Lots 1 and 2, Block 1. The intent of this easement is to prohibit construction of structures within this area, as it is part of the Northern Bridge Corridor. The easement reserves the area for the future bridge and related roadways, but does not dedicate the property for this purpose.

14. Changes. This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major

changes require a public hearing and a majority vote of the Bismarck Planning & Zoning Commission.

Zoning Districts

| | |
|------------|-------------------------------|
| A | Agriculture |
| RR | Rural Residential |
| R5 | Residential |
| RMH | Manufactured Home Residential |
| R10 | Residential |
| RM | Residential Multifamily |
| RT | Residential (Offices) |
| HM | Health and Medical |
| CA | Commercial |
| CG | Commercial |
| MA | Industrial |
| MB | Industrial |
| PUD | Planned Unit Development |
| DC | Downtown Core |
| DF | Downtown Fringe |

Future Land Use Plan

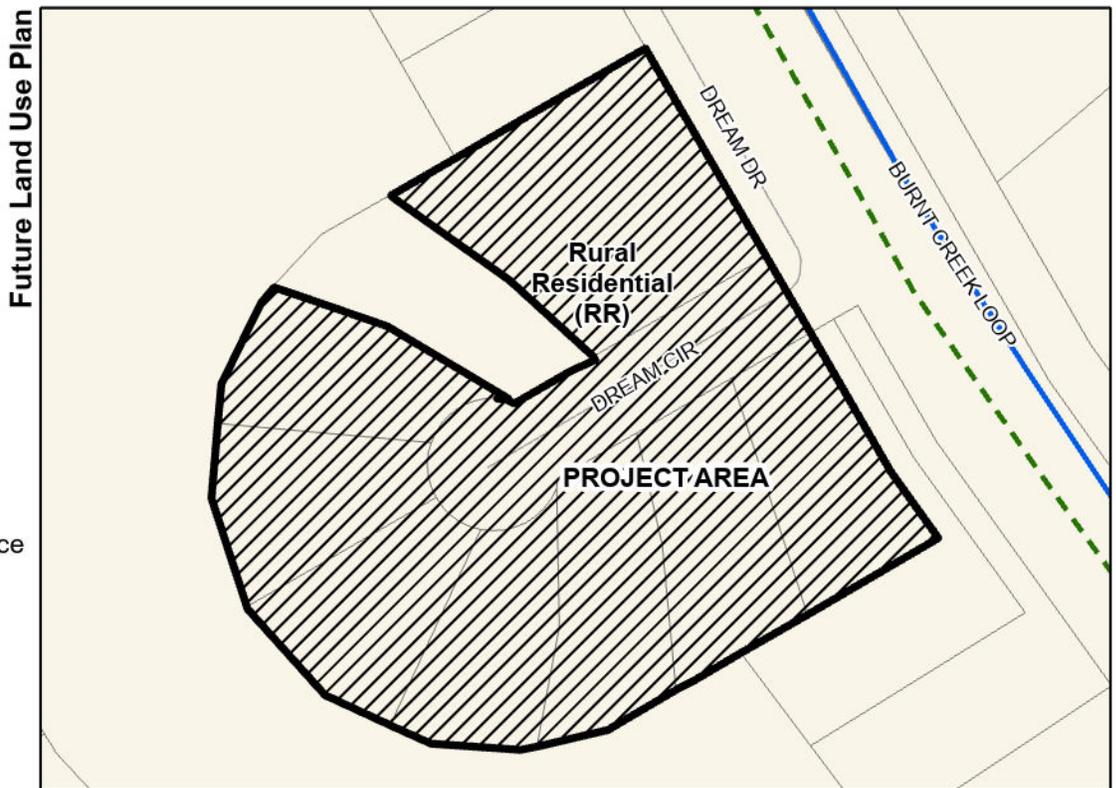
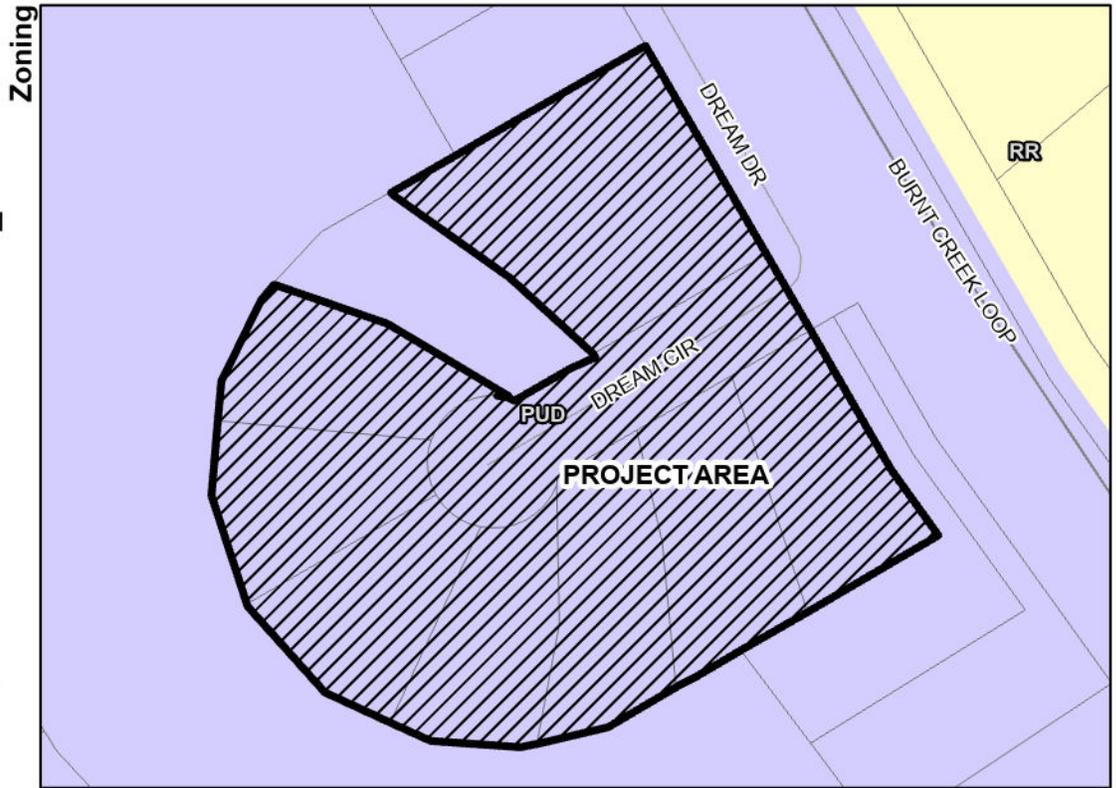
| | |
|----------------|-----------------------------|
| UN | Urban |
| NMU | Neighborhood Mixed Use |
| CMU | Community Mixed Use |
| DMU | Destination Mixed Use |
| DT | Downtown |
| IND | Industrial |
| IF | Industrial Flex |
| IMU | Industrial Mixed Use |
| INS | Institutional |
| RR | Rural Residential |
| TR | Transitional Rural |
| PKOS | Parks/Open Space |
| URA/URB | Urban Reserve Mid/Long-Term |

Active Mobility Plan

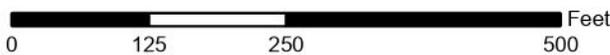
— Future Shared Trail

Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.



City of Bismarck
Community Development
Planning Division
May 17, 2024

Misty Waters Dream Circle PUD Amendment

Lots 30, 31, 32, 33, 34, 35, 36, 38 and 39

Block 1 - Misty Waters Subdivision

Statement of Request for Revision, April 18, 2024

The North Dakota Supreme Court (Court) recently ruled {2023 ND171, No. 20220322} that the Misty Waters Subdivision bay rear yard setback “is fixed” based on the LOMR-F Case No. 05-08-0351A meets and bounds line, as delineated on the plat, and included in Ordinance No 5435, which as noted below is part of the Major PUD Amendment {Adopted August 23, 2006}.

“the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR.” {emphasis added, note the plat is not mentioned, but the lines are one in the same.}

The original PUD {adopted June 17, 24, 2005} stated the rear yard setback on the bay lots was 30 feet. However, using that point of measurement from the rear lot line, conflicted with a platted drainage easement. Therefore, effectively the upland edge of the drainage easement was the “*de-facto*” setback line. Subsequently, it was determined that using the Base Flood Elevation (BFE) {approximated by a delineated meets and bounds line – 2005 LOMR} could be used as the setback, which was then adopted in 2006 PUD Amendment. The interpretation of the 2005 LOMR-F line by both the City of Bismarck (City) and Misty Waters Architectural Control Committee (ACC) considered the following:

1. The 2005 LOMR-F removed the property from the regulatory floodplain {FEMA criteria for the removal of mandatory flood insurance and per the City of Bismarck’s floodplain ordinance}, allowing residential construction without a floodplain development permit (via FEMA), however the City of Bismarck requires this permit on properties removed via a LOMR-F, and these structures are not required to carry flood insurance, if they have a federally backed mortgage.
2. The purpose for the 2005 LOMR-F Line on the plat was to provide notice to anyone purchasing a lot that the land within the LOMR-F footprint was elevated and out of the floodplain. Use of this line was intended to keep structures from being constructed within the floodplain without first considering the City’s floodplain ordinance and associated flood risks. The current 2006 PUD language set the primary setback criteria as the “elevation”, (primary reference) and the line location was the approximate BFE or above (secondary reference). The 2005 LOMR-F line was placed at or above the BFE, which at that time was 1640.3 to remove properties from the floodplain. A review of this line within the plat noted the elevation varies since construction and its location is inconsistent through the development.
3. We believe the City and ACC reasonably interpreted the current PUD setback language to allow the approval of lot certificates and construction, if the residence was placed above the BFE, per the floodplain ordinance, and did not encroach into the drainage easement. Subsequently, in several instances this resulted in a modified setback based on fill placement to raise the building footprint above the BFE. Effectively this interpretation is unchanged from the original 2005 PUD *de-facto* drainage easement line which controlled the setback, however with additional notice and control relative to construction in the floodplain.

4. The 2005 LOMR-F line was never intended as a “fixed setback”, therefore the requested PUD amendment creates a fixed line conforming to the City and ACC’s interpretation of the 2006 language, as well as restoring the *de-facto* line in the 2005 PUD language, namely in both instances the upland drainage easement boundary line. It also removes the noncompliance status for two of the residences created by the Court’s setback determination.
5. The proposed setback does not impact or conflict with the new floodplain mapping being implemented in June 2024, or the subsequent Base Flood Elevation. Note only one residence in this request completed a LOMR-F for its construction, which was revalidated by FEMA in the new mapping and summary of map actions. Given the nature of the 2005 LOMR-F line, affecting multiple lots within the development, FEMA is redetermining the removal status for each lot within LOMR-F Case No. 05-08-0351A. This line on each lot will either be superseded by the new June 2024 floodplain mapping or the LOMR-F will be revalidated.
6. **Table One** containing an ownership listing illustrates a summary of the building activities for development on the PUD lots. **Exhibit A, Base Map and Lot Exhibits** illustrate the following:
 - a. Platted lot lines, boundaries, and utility easements (not all plat data is shown)
 - b. Original 30-foot rear yard Setback
 - c. 2005 LOMR-F Line (*Court defined setback*)
 - d. Requested PUD Setback revision - drainage easement
 - e. Projected June 2024 floodplain boundary and revalidated LOMR-F Case No. 20-08-0557A
 - f. Structure locations were obtained and are illustrated based on the lot certificates provided by the City, which are included herein by reference. As dimensions are provided in these certificates so no additional field surveys were deemed necessary.
 - g. 2020 MPO Aerial photography base map (2023 can be provided when available).
7. The drainage easement and its use will continue to be preserved and regulated by the ACC.
8. As a point of interest, the new June 2024 Flood Insurance Study increases the BFE by 0.4 feet for this development, which is now 1640.7, as measured backwater from the marina access channel. The new floodplain boundary is based on the Missouri River flood elevation, measured as backwater from the access channel and 2016 LiDAR topography. Therefore, any topographic changes since that time are not shown on the new mapping.

In summary, setbacks are established and enforced to provide uniform compliance within a subdivision and may be adjusted with adequate justification. This PUD request corrects the non-compliance status created by the Court and establishes the rear yard setback as the upland drainage easement boundary, which conforms to the *de-facto* conditions and is consistent with both the 2005 and 2006 PUD language.

On a related matter the Misty Waters Restrictive Covenants have been amended and will be recorded to reflect the following text addition to “Section 3, Building and Set Back Location”.

“Irrespective of anything to the contrary contained in these Restrictive Covenants or incorporated into the Restrictive Covenants by reference, the minimum setback from the bay for all existing and new residential structures shall be the inland edge of the drainage easement applicable to each lot.”

TABLE ONE

Misty Waters Dream Circle PUD Amendment Rear Set Back Compliance Evaluation PUD Lot Data Summary 4/18/2024

| PUD Lots | Parcel No. | Name | Address | Lot Block 1 | Lot in Noncompliance | Elevation Certificate Data | | | LOMR (revalidation) | Lot Survey Source | | | Building Permit Setbacks | | | | |
|----------|---------------------|-------------------------------------|---|-------------|----------------------|----------------------------|-----------------------------|----------|----------------------------|----------------------|-------------------------------|------------|-----------------------------|--|-----------|--|--|
| | | | | | | BFE [2] [3] | Lowest Adjacent Grade (LAG) | BFE 2024 | | Building Permit Date | Survey (firm) | Front Yard | Rear Yard [1] [3] | 2005 LOMR shown on lot certificate [2] [4] | Side Yard | Easements | |
| 1 | 31-139-81-60-01-300 | Nancy K Volk Living Trust | 6313 Dream Circle Bismarck, ND 58503 | 30 | | | 1640.7 | 1640.7 | FEMA | 10/5/2016 | Swenson, Hagen & Company P.C. | 25 | 20 | Y | 6-15.8 | 10' UE Front PL (NW) | |
| 2 | 31-139-81-60-01-310 | Dustin & Holly Seibel (2018) | 6321 Dream Circle Bismarck, ND 58503 | 31 | | 1640.9 | 1642.3 | 1640.7 | FEMA | 4/17/2018 | Swenson, Hagen & Company P.C. | 25 | 20 | Y | 6-17.7 | 10' UE Front PL (N), 20' Irrigation Easement Rear PL (S) | |
| 3 | 31-139-81-60-01-320 | Scott & Tegan Schumacher (2019) | 6329 Dream Circle Bismarck, ND 58503 | 32 | | 1640.8 | 1642.3 | 1640.7 | FEMA | 4/1/2019 | Swenson, Hagen & Company P.C. | 25 | 30 | Y | 10 | 10' UE Front PL (NW) | |
| 4 | 31-139-81-60-01-330 | James & Teresa Reis (2009) | 6337 Dream Circle Bismarck, ND 58503 | 33 | Yes | | | 1640.7 | FEMA | 8/4/2009 | Houston Engineering Inc. | 25 | 35 | N | 10 | 10' Utility Easement Front PL (N) | |
| 5 | 31-139-81-60-01-340 | Nicole Perreault | 6343 Dream Circle Bismarck, ND 58503 | 34 | | | | 1640.7 | FEMA | | | | | | | | |
| 6 | 31-139-81-60-01-350 | Alexander Dahl & Kyla Gradin (2021) | 6340 Dream Circle (4838 Hudson Street) Bismarck, ND 58503 | 35 | | 1640.9 | 1641.8 | 1640.7 | FEMA | 9/13/2021 | Swenson, Hagen & Company P.C. | 25 | LOMR-F Case No. 05-08-0351A | Y | 10 | 10' Utility Easement Front (E), 20' Drainage Easement Rear (W), 10' Drainage & Access Easement Side (S) | |
| 7 | 31-139-81-60-01-360 | Jason & Kryta Sellers (2019) | 6334 Dream Circle Bismarck, ND 58503 | 36 | Yes | 1640.9 | 1641.9 | 1640.7 | LOMR-F Case No. 20-08-057A | 9/18/2019 | Swenson, Hagen & Company P.C. | 25-35-40 | 30 | | 10 | 10' UE Front PL (N), LOMAR Boundary Line Mid Lot 05-19-2005, 20' Drainage Easement 3/4 of Lot | |
| 8 | 31-139-81-60-01-390 | Eric & Sarah Volk (2015) | 6312 Dream Circle Bismarck, ND 58503 | 38 & 39 | | | | 1640.7 | FEMA | 9/12/2015 | Swenson, Hagen & Company P.C. | 25 | 25 | | 6-38.9 | 10' UE on Front PL (SE), right side PL (NE), & rear PL (NW), 20' (L Shape) drainage easement, 40' (SE) in front of left rear pin & 67'48" (NG) to the right of left rear pin | |

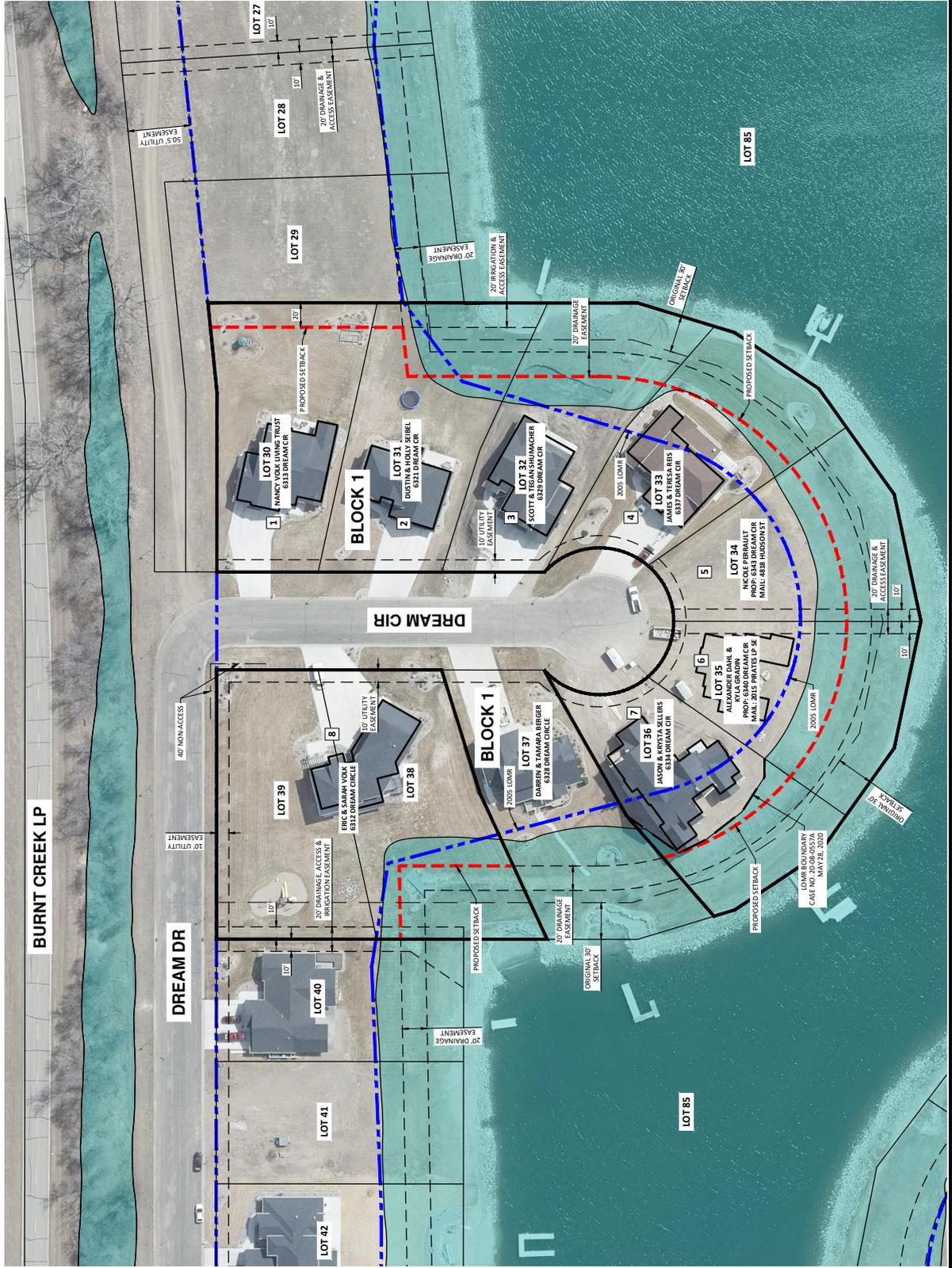
Notes:

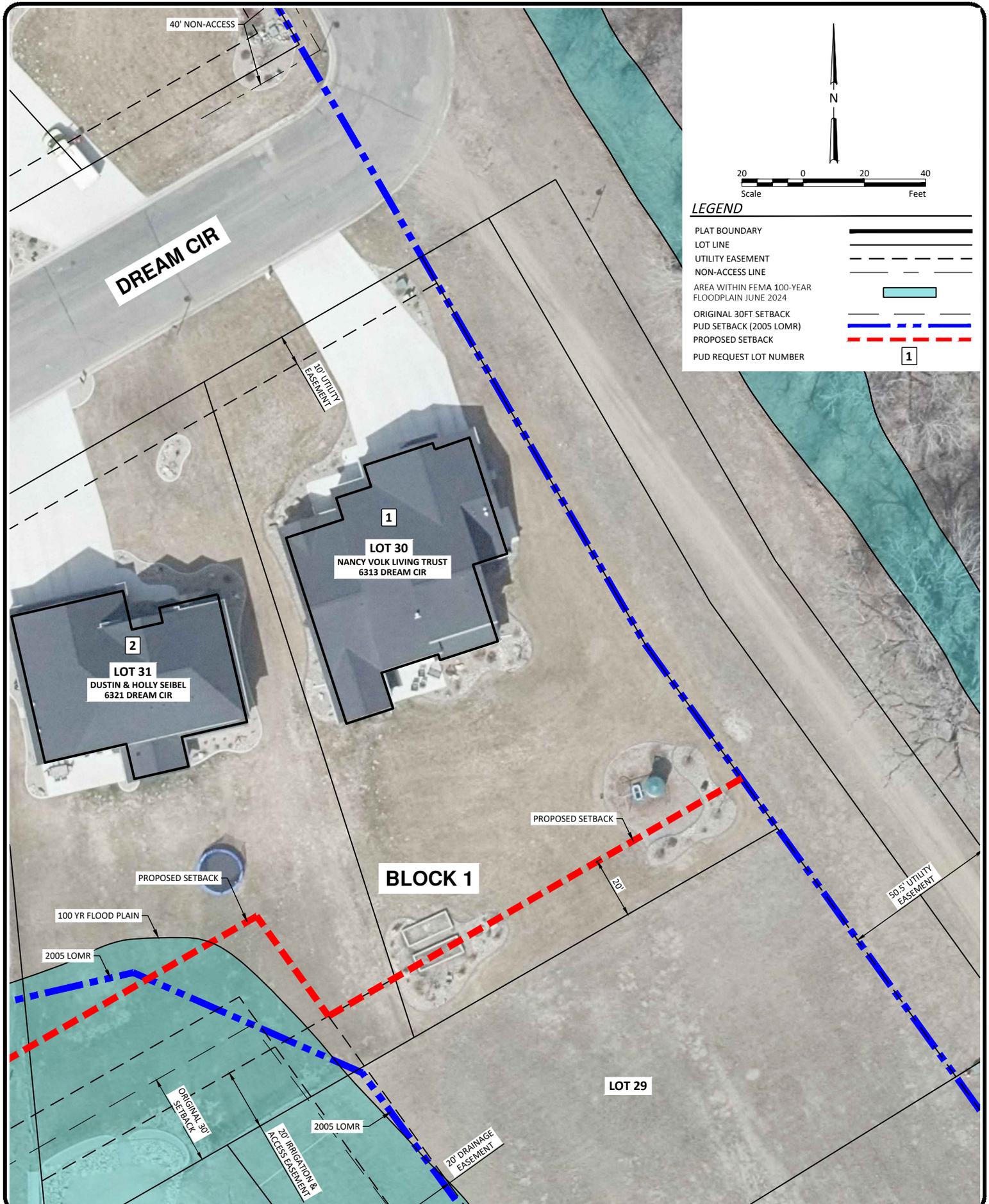
- The original PUD dated June 17, 24, 2005 created a 30 foot rear set back, which conflicted with the stormwater easement, which effectively became the de-facto setback.
- A revised PUD dated August 23, 2006 created a rear year set back using the platted 2005 LOMR(F) line, which was based on the BFE elevation of 1640.3 and intended to keep residences from being constructed in the floodplain. The interpretation by the (City and HOA) was that if the property was filled and BFE elevation relocated effectively the stormwater easement again became the de-facto set back. The ND Supreme Court interpreted the PUD language to state that the 2005 LOMR-F line was in fact "a fixed" setback line.
- This PUD revision would correct the noncompliance issues created by the ND Supreme Court's determination, and restore the intent of the original and second PUD.
- The original LOMR-F Case No. 05-08-351A was dated May 19, 2005, a 2006 revision was completed which removed additional property from the floodplain, however this was not addressed in the Supreme Court's decision so the 2005 line governs in all locations.
- The 2005 LOMR-F line was based on the BFE elevation 1640.3, however the actual elevation the meets and bound location can be higher, but not lower than.
- The 2024 BFE is 1640.7, which is 0.4 feet higher than the 2005 BFE at 1640.3 (NAVD 88) - these are based on a backwater elevation from marina access channel.
- Note the BFE's used on the elevation certificates were likely obtained from the Missouri River profile, which is why they are higher than the backwater BFE noted in note #6.

MISTY WATERS DREAM CIRCLE PUD

EXHIBIT A - BASE MAP

BURLEIGH COUNTY, NORTH DAKOTA



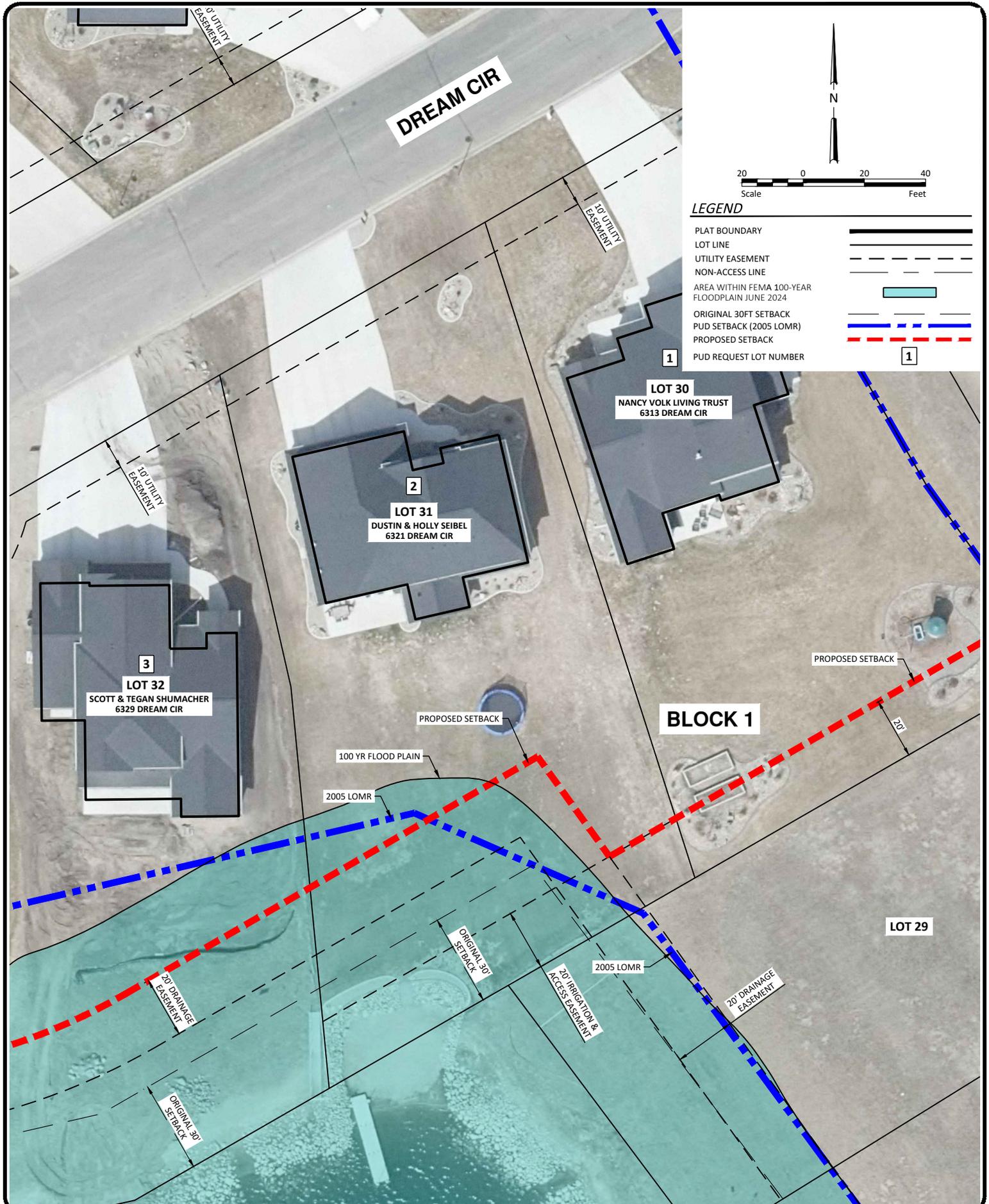


LEGEND

- PLAT BOUNDARY
- LOT LINE
- UTILITY EASEMENT
- NON-ACCESS LINE
- AREA WITHIN FEMA 100-YEAR FLOODPLAIN JUNE 2024
- ORIGINAL 30FT SETBACK
- PUD SETBACK (2005 LOMR)
- PROPOSED SETBACK
- PUD REQUEST LOT NUMBER 1

H:\JBM\12106\12106_0001 Jason Sellers Setback Rev\CAD\PUID\Misty Waters PUD.dwg-LOT 30-4/17/2024 6:05 PM-(tpaul)

| | | | | | |
|------------|----------|---------|---|---|--------------|
| | Drawn by | Date | MISTY WATERS DREAM CIRCLE PLANNED UNIT DEVELOPMENT AMENDMENT BURLEIGH COUNTY, NORTH DAKOTA | EXHIBIT A LOT 30, BLOCK 1, MISTY WATERS | SHEET |
| | TP | 4-17-24 | | | |
| Checked by | Scale | | | | |
| TM | AS SHOWN | | | | |
| | | | PROJECT NO. 12106-0001 | | 1 |



H:\JBM\12100\12106\12106_0001 Jason Sellers Setback Rev\CAD\PUD\Misty Waters PUD.dwg-LOT 31-4-17\2024 6:05 PM-(tpaul)

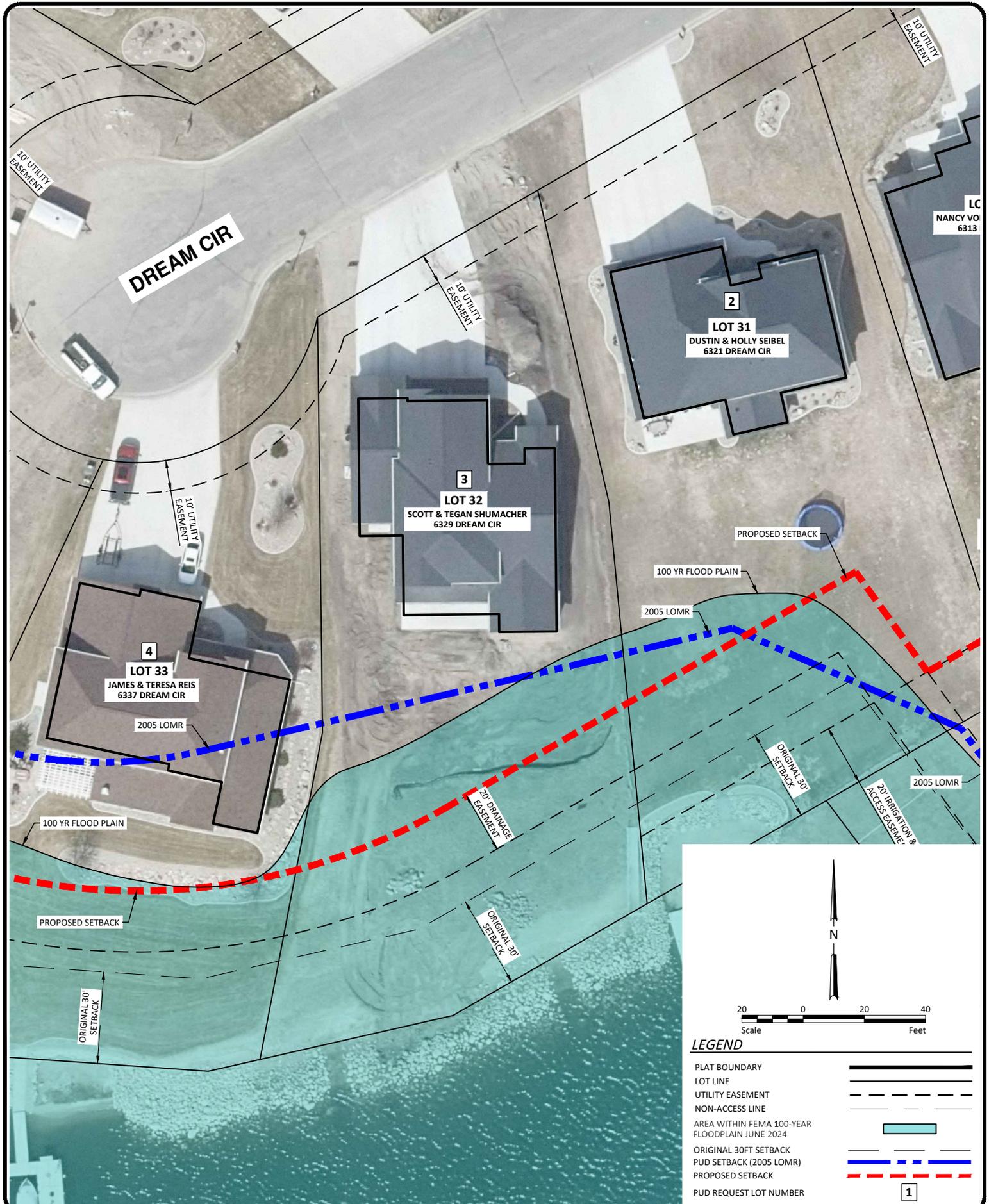
| | | |
|------------|----------|---------|
| | Drawn by | Date |
| | TP | 4-17-24 |
| Checked by | Scale | |
| TM | AS SHOWN | |

MISTY WATERS DREAM CIRCLE
PLANNED UNIT DEVELOPMENT AMENDMENT
BURLEIGH COUNTY, NORTH DAKOTA

EXHIBIT A
LOT 31, BLOCK 1, MISTY WATERS
PROJECT NO. 12106-0001

SHEET
2

H:\JBM\12100\12106\12106_0001 Jason Sellers Setback Rev\CAD\PUID\Misty Waters PUD.dwg-LOT 32-4/17/2024 6:05 PM-[tpaul]



Scale Feet

LEGEND

| | |
|--|----------|
| PLAT BOUNDARY | |
| LOT LINE | |
| UTILITY EASEMENT | |
| NON-ACCESS LINE | |
| AREA WITHIN FEMA 100-YEAR FLOODPLAIN JUNE 2024 | |
| ORIGINAL 30FT SETBACK | |
| PUD SETBACK (2005 LOMR) | |
| PROPOSED SETBACK | |
| PUD REQUEST LOT NUMBER | 1 |

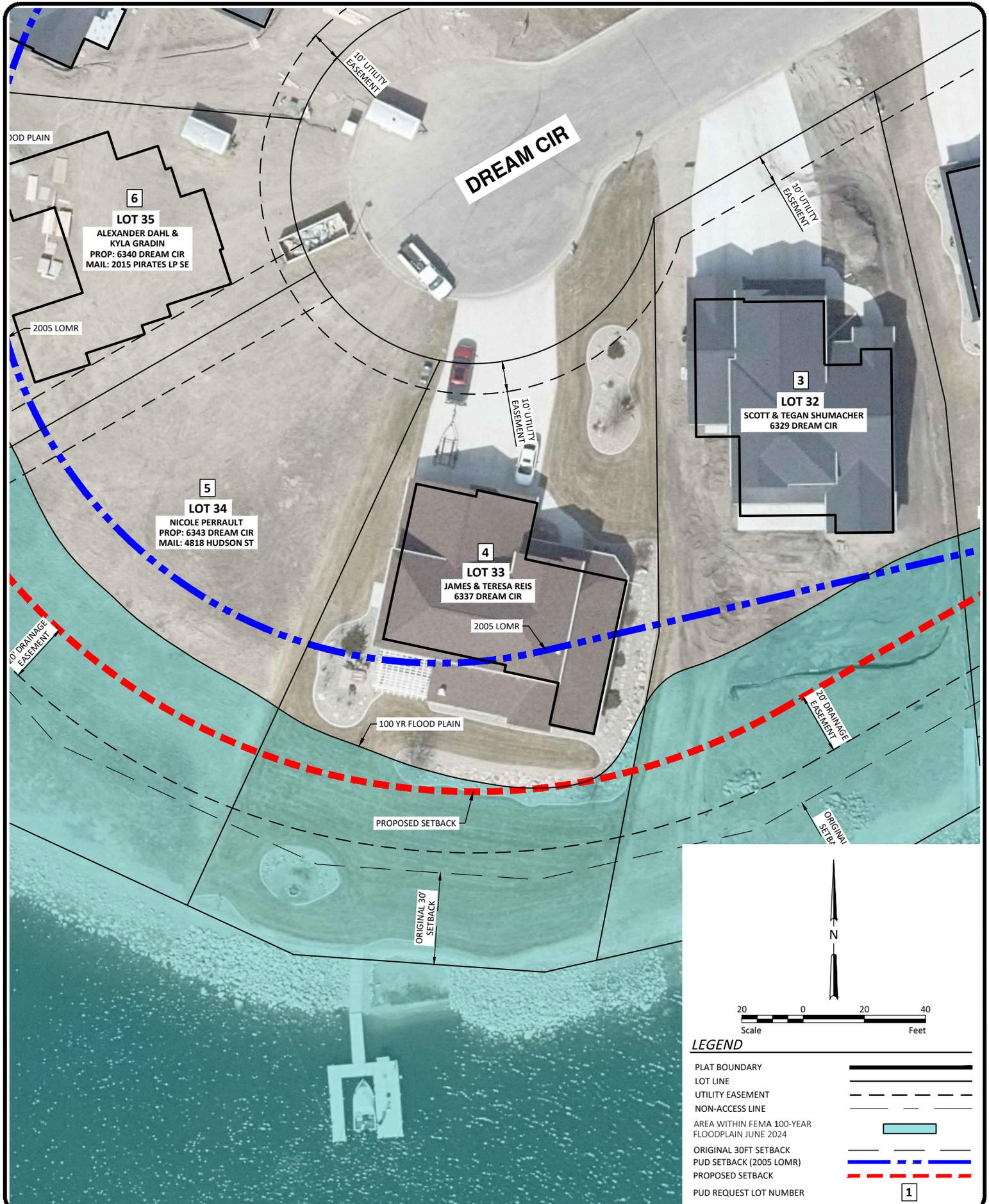
| | | |
|------------|----------|---------|
| | Drawn by | Date |
| | TP | 4-17-24 |
| Checked by | Scale | |
| TM | AS SHOWN | |

**MISTY WATERS DREAM CIRCLE
 PLANNED UNIT DEVELOPMENT AMENDMENT
 BURLEIGH COUNTY, NORTH DAKOTA**

**EXHIBIT A
 LOT 32, BLOCK 1, MISTY WATERS
 PROJECT NO. 12106-0001**

**SHEET
 3**

H:\JBM\12100\12106\12106_0001 Jason Sellers Setback Rev\CAD\PUD\Misty Waters PUD.dwg-LOT 33-4/17/2024 6:05 PM-(tpaul)



LEGEND

| | |
|--|----------|
| PLAT BOUNDARY | |
| LOT LINE | |
| UTILITY EASEMENT | |
| NON-ACCESS LINE | |
| AREA WITHIN FEMA 100-YEAR FLOODPLAIN JUNE 2024 | |
| ORIGINAL 30FT SETBACK | |
| PUD SETBACK (2005 LOMR) | |
| PROPOSED SETBACK | |
| PUD REQUEST LOT NUMBER | 1 |

| | | |
|------------|----------|---------|
| | Drawn by | Date |
| | TP | 4-17-24 |
| Checked by | Scale | |
| TM | AS SHOWN | |

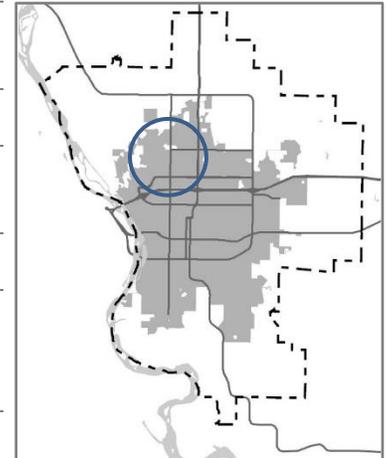
**MISTY WATERS DREAM CIRCLE
PLANNED UNIT DEVELOPMENT AMENDMENT
BURLEIGH COUNTY, NORTH DAKOTA**

**EXHIBIT A
LOT 33, BLOCK 1, MISTY WATERS
PROJECT NO. 12106-0001**

**SHEET
4**

Project Summary

| | |
|------------------------------|---|
| <i>Title:</i> | Part of Northern Sky Addition, and all of Northern Sky Second Addition First Replat |
| <i>Status:</i> | Planning and Zoning Commission - Public Hearing |
| <i>Property Owner(s):</i> | Wilment Development, LLC and Wilment Properties LLC |
| <i>Project Contact:</i> | Landon Niemiller, AICP, Swenson Hagen & Co |
| <i>Project Location:</i> | Northwest Bismarck, in the northwest quadrant of the intersection of Washington Street and Ash Coulee Drive |
| <i>Project Size:</i> | 25.6 acres |
| <i>Applicant Request:</i> | Rezone the property to CG – Commercial to allow additional commercial uses |
| <i>Staff Recommendation:</i> | Approve |



Site Information

| <i>Existing Conditions</i> | | <i>Proposed Conditions</i> | |
|----------------------------|---|----------------------------|--|
| <i>Lots/Blocks:</i> | 4 lots in 4 blocks | <i>Lots/Blocks:</i> | 4 lots in 4 blocks |
| <i>Land Use:</i> | Undeveloped | <i>Land Use:</i> | Undeveloped |
| <i>Future Land Use:</i> | Community Mixed Use (CMU) | <i>Future Land Use:</i> | Community Mixed Use (CMU) |
| <i>Zoning:</i> | CA – Commercial RT – Residential | <i>Zoning:</i> | CG – Commercial |
| <i>Uses Allowed:</i> | CA – Neighborhood commercial RT – Offices and multi-family residential | <i>Uses Allowed:</i> | CG – General commercial, multi-family residential, and offices |
| <i>Max Density:</i> | CA – 30 units / acre RT – 30 units / acre | <i>Max Density:</i> | CG – 42 units / acre |

Area Information

Property History

| | | | |
|-----------------------------|-----------------------------|-----------------|-------------------|
| <i>Zoning Jurisdiction:</i> | Extraterritorial Area (ETA) | <i>Zoned:</i> | 11/2002 & 08/2020 |
| <i>Township:</i> | Hay Creek (organized) | <i>Platted:</i> | 08/2012 & 06/2022 |
| <i>Neighborhood:</i> | Horizon Heights | <i>Annexed:</i> | 2012 & N/A |

Project Narrative

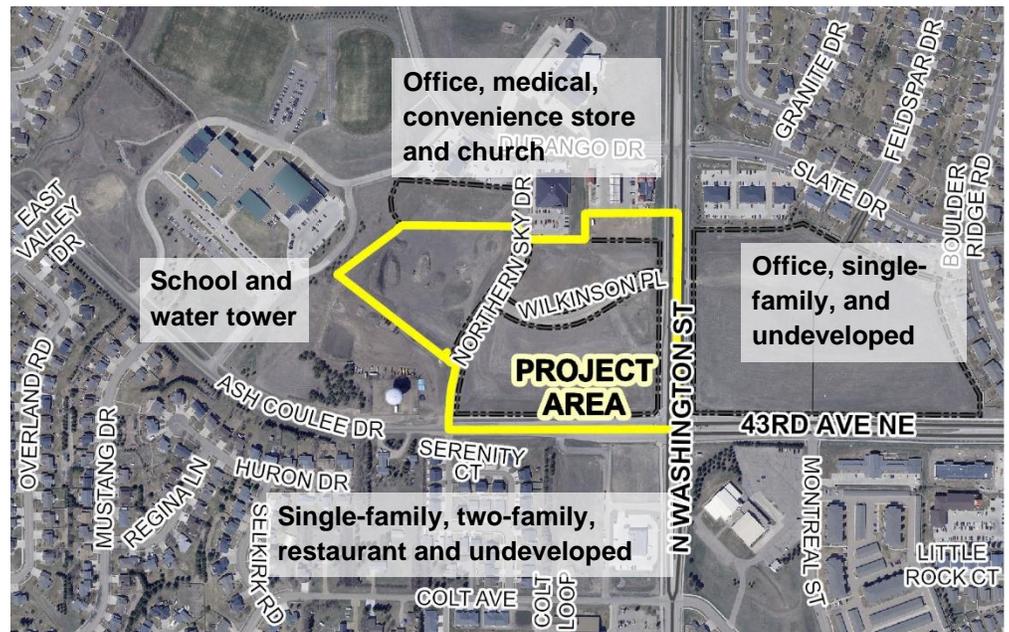
Wilment Development LLC and Wilment Properties LLC are requesting approval of a zoning map amendment on Lot 1 Less the North 250 feet, Block 1, Northern Sky Addition, and all of Northern Sky Second Addition First Replat. The applicant is requesting a change from the existing RT – Residential and CA – Commercial zoning

districts to the CG – Commercial zoning district for the entire project area. Lot 1 Less the North 250 feet, Block 1, Northern Sky Addition is within the corporate limits of Bismarck while the entirety of Northern Sky Second Addition First replat, with the exception of the rights-of-way, is currently not annexed but surrounded by the corporate limits.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:

A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.



The property has been identified as primarily Community Mixed Use (CMU) in the Future Land Use Plan, with one small area of Neighborhood Mixed Use (NMU). The CMU and NMU areas are both described as a mixture of housing and commercial or employment activity, with the former leaning more into commerce and employment opportunities and the latter focusing on more residential opportunities. Goals and objectives of this plan as they relate to zoning map amendments are referenced in review standards below.

The project area is immediately surrounded by a variety of different zoning districts including P – Public to the west, PUD – Planned Unit

Development and RT – Residential to the south, CA – Commercial and RT – Residential to the east, and CA Commercial, PUD – Planned Unit Development and RT – Residential to the north. The general land uses in the surrounding area include single-family and two-family dwellings, offices, medical facilities, churches, a school and some undeveloped, unannexed land to the east across North Washington Street that is also owned by the applicant.

While the parcels of Northern Sky Second Addition First Replat are not annexed, there is a development agreement which states that the parcels shall be annexed by the landowner(s) no later than February 25, 2030. The landowner(s)

(continued)

may request annexation prior to that date if desired.

Public Engagement

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 14 and June 21, 2024, and 38 letters were mailed to the owners of nearby properties on June 14, 2024.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The Future Land Use Plan is adhered to with the proposed zoning map amendment ([Future Land Use Plan](#))

Yes. The proposed zoning map amendment is within the area designated as Community Mixed Use (CMU) and Neighborhood Mixed Use (NMU) in the Future Land Use Plan, as described in the Project Context section above. The proposed zoning district would generally conform to the character of this district.

The proposed amendment is compatible with adjacent land uses and zoning ([Goal S10-a](#), [S5-a](#))

Yes. Adjacent uses are described in the project context section above. The proposed zoning district would allow a variety of commercial uses including retail, services, offices, and medical

uses. While no specific development is being proposed in conjunction with this request, the applicant has stated that the intent of the zoning change is to allow additional commercial uses not currently allowed in the existing CA – Commercial and RT – Residential districts. While there is some single- and two-family residential development directly to the south of the project area, Ash Coulee Drive is a wide arterial roadway that divides these two areas. This will act as a separation between the commercial development to the north with no access directly between the two areas. Therefore, development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established ([Goal S9-e](#))

Yes. The current CA – Commercial and RT – Residential zoning districts were established in November 2002 and August 2020, depending on the parcel and plat. Conditions have changed since this time. The area continues to develop with a mixture of residential and commercial uses that a CG – Commercial zoning district would continue to support.

Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment ([Goal S1-a](#), [Goal T1-c](#))

Yes. The proposed zoning map amendment would not adversely impact housing opportunities in any way.

The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

Yes. The following objectives of the plan would be advanced through the proposed amendment.

- S10: Support the arrangement of compatible land uses to minimize adjacent conflicts.
- G2: Provide for a compact and orderly pattern of outward urban growth.
- G3: Coordinate expansion of city infrastructure and services with growth.

This project does not directly involve other immediate changes to the area such as annexation or specific development on the land, yet the zoning change would not impede future development and could potentially encourage development.

There is a development agreement in place for Northern Sky Second Addition First Replat that states the area will be annexed no later than 2030 if the landowner(s) do not request annexation sooner.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; [NDCC 40-27-03](#))

Yes. The proposed zoning map amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning map amendment on Lot 1 Less the North 250 Feet, Block 1, Northern Sky Addition and all of Northern Sky Second Addition First Replat.

Attachments

1. Draft Zoning Ordinance
2. Zoning and Plan Reference Map
3. Proposed Zoning Map

Staff report prepared by: Isak Johnson, Planner

701-355-1850 | ijohnson@bismarcknd.gov

CITY OF BISMARCK

ORDINANCE NO. XXXX

| | |
|-----------------------------------|-------|
| <i>First Reading</i> | _____ |
| <i>Second Reading</i> | _____ |
| <i>Final Passage and Adoption</i> | _____ |
| <i>Publication Date</i> | _____ |

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the RT – Residential and CA – Commercial zoning districts and included in the CG - Commercial zoning district:

Lot 1 Less the North 250 Feet, Block 1, Northern Sky Addition and all of Northern Sky Second Addition First Replat

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance area hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



Zoning and Plan Reference Map

ZC2024-003

NORTHERN SKY ADD LOT 1, BLOCK 1 & NORTHERN SKY 2ND
FIRST REP

Zoning Districts

| | |
|------------|-------------------------------|
| A | Agriculture |
| RR | Rural |
| | Residential |
| R5 | Residential |
| RMH | Manufactured Home Residential |
| R10 | Residential |
| RM | Residential Multifamily |
| RT | Residential (Offices) |
| HM | Health and Medical |
| CA | Commercial |
| CG | Commercial |
| MA | Industrial |
| MB | Industrial |
| PUD | Planned Unit Development |
| DC | Downtown Core |
| DF | Downtown Fringe |

Future Land Use Plan

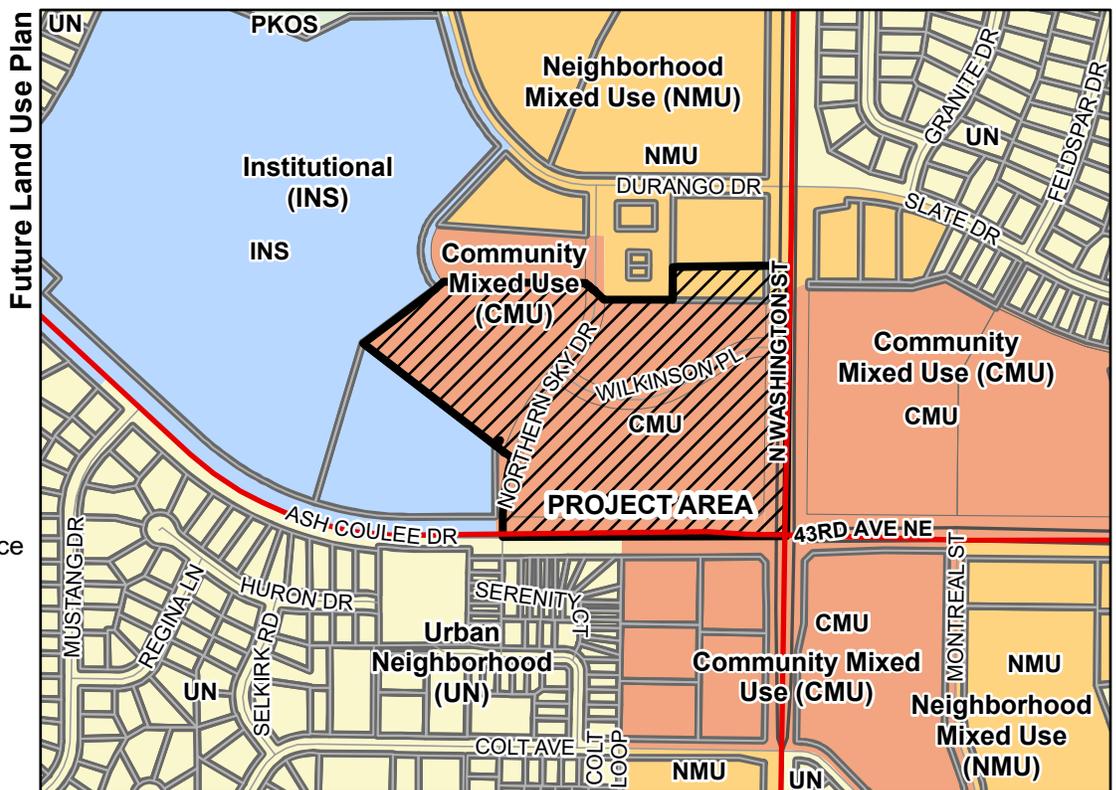
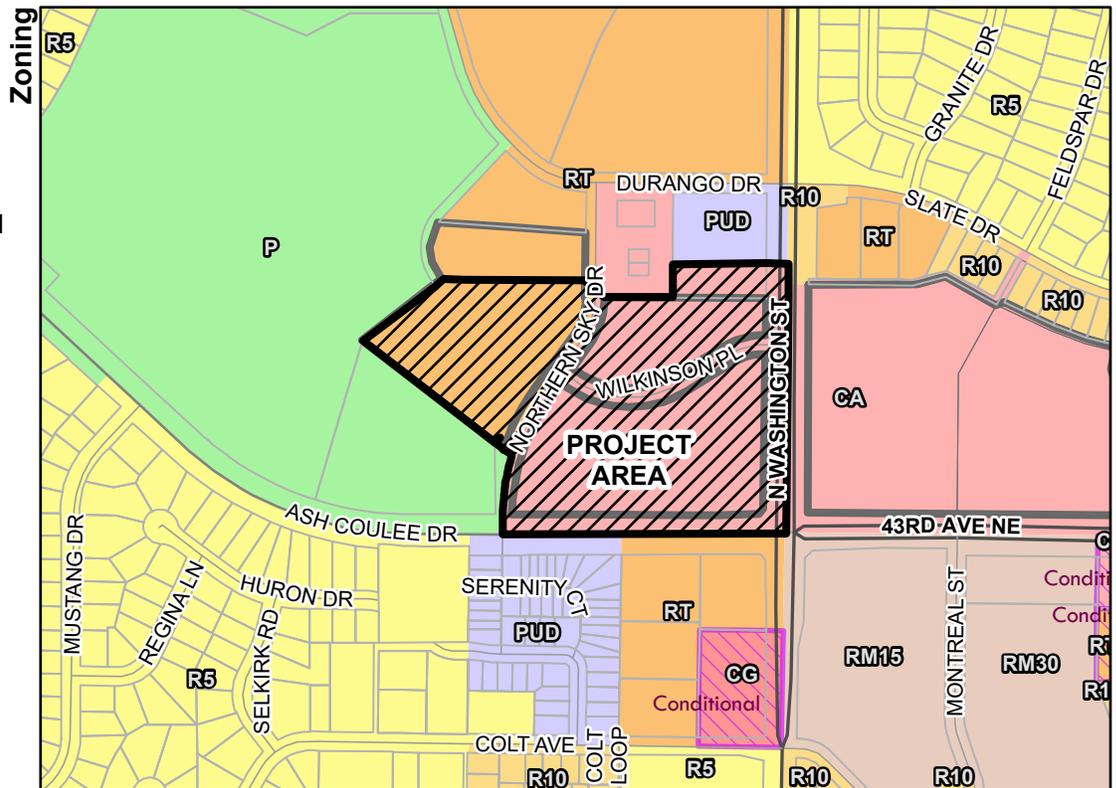
| | |
|-------------|-----------------------------|
| UN | Urban |
| NMU | Neighborhood Mixed Use |
| CMU | Community Mixed Use |
| DMU | Destination Mixed Use |
| DT | Downtown |
| IND | Industrial |
| IF | Industrial Flex |
| IMU | Industrial Mixed Use |
| INS | Institutional |
| RR | Rural |
| TR | Residential Transitional |
| PKOS | Rural Parks/Open Space |
| URA/ | Urban Reserve Mid/Long-Term |
| URB | |

Active Mobility Plan

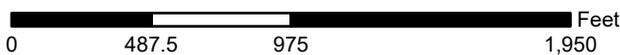
— Future Shared Trail

Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



City of Bismarck
Community Development
Planning Division
May 9, 2024



Proposed Zoning Change

ZC2024-003

NORTHERN SKY ADD LOT 1, BLOCK 1 & NORTHERN SKY 2ND FIRST REP

Proposed New Zoning Map

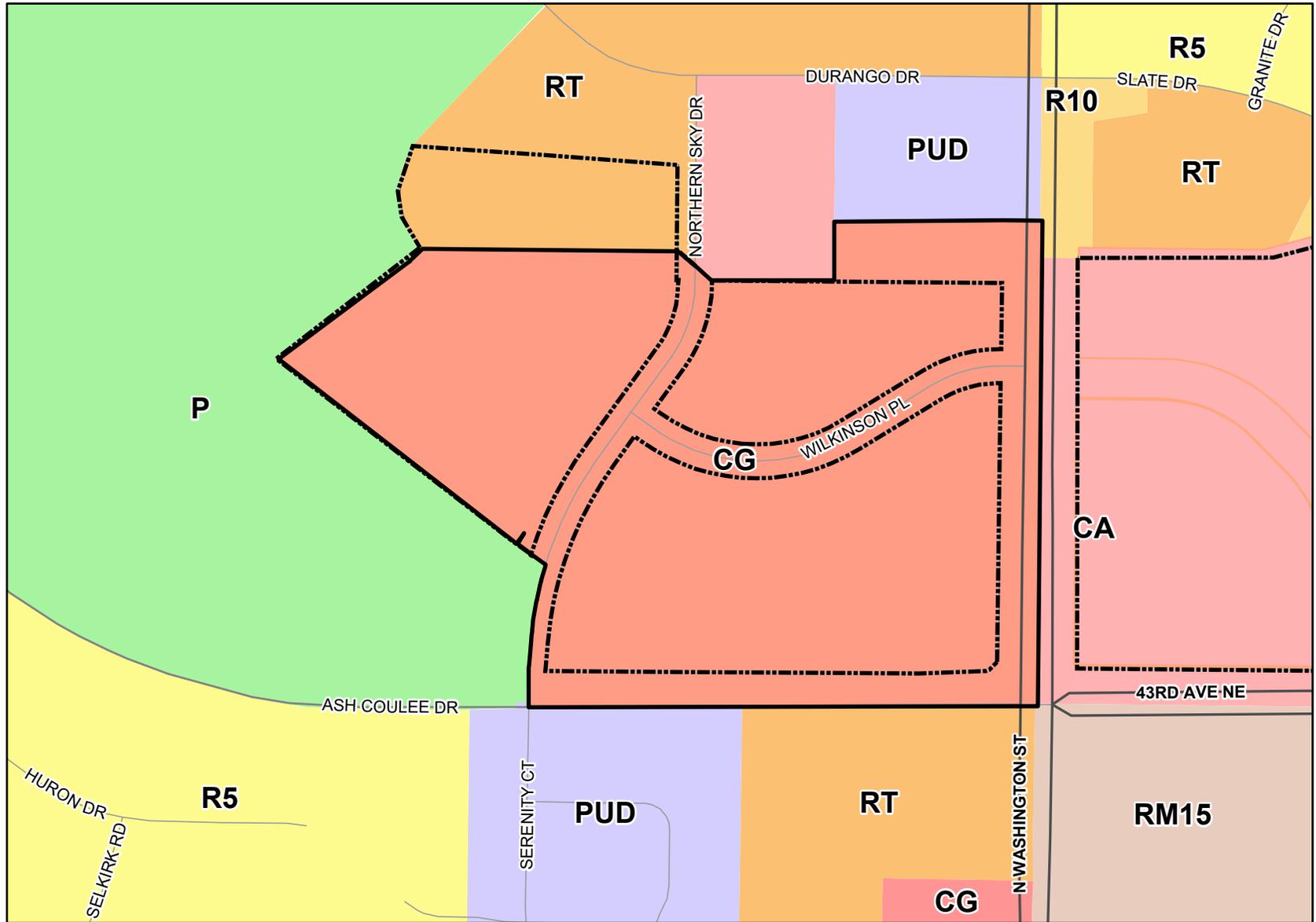
Project Area (zoning within is proposed)

City Limits

Zoning Districts

- A** Agriculture
- RR** Rural Residential
- R5** Residential
- RMH** Manufactured Home Residential
- R10** Residential
- RM** Residential Multifamily
- RT** Residential (Offices)
- HM** Health and Medical
- CA** Commercial
- CG** Commercial
- MA** Industrial
- MB** Industrial
- PUD** Planned Unit Development
- DC** Downtown Core
- DF** Downtown Fringe

A "C-" prior to the district indicates that special conditions would apply to the zoning district

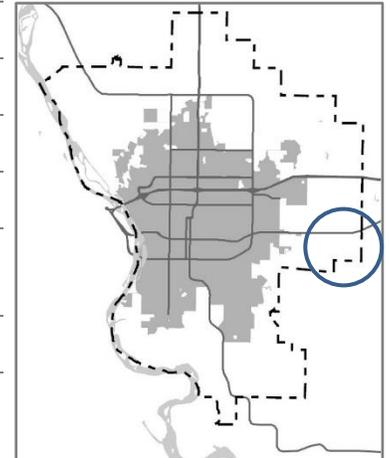


City of Bismarck
Community Development
Planning Division
May 9, 2024

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

Project Summary

| | |
|------------------------------|---|
| <i>Title:</i> | Apple Creek Farm |
| <i>Status:</i> | Planning and Zoning Commission - Public Hearing |
| <i>Property Owner(s):</i> | Donald and ReNay Zundel |
| <i>Project Contact:</i> | ReNay Zundel |
| <i>Project Location:</i> | Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township |
| <i>Project Size:</i> | 39.19 acres |
| <i>Applicant Request:</i> | Approval of a special use permit for a major agriculture recreation use |
| <i>Staff Recommendation:</i> | Approve |



Site Information

| <i>Existing Conditions</i> | | <i>Proposed Conditions</i> | |
|----------------------------|---|----------------------------|---|
| <i>Lots/Blocks:</i> | 1 parcel | <i>Lots/Blocks:</i> | 1 parcel |
| <i>Land Use:</i> | Rural residential | <i>Land Use:</i> | Rural residential |
| <i>Future Land Use:</i> | Parks and Open Space (PKOS) Rural Residential (RR) | <i>Future Land Use:</i> | Parks and Open Space (PKOS) Rural Residential (RR) |
| <i>Zoning:</i> | A – Agricultural | <i>Zoning:</i> | A – Agricultural |
| <i>Uses Allowed:</i> | A – Agriculture | <i>Uses Allowed:</i> | A – Agriculture |
| <i>Max Density:</i> | A – 1 unit / 40 acres | <i>Max Density:</i> | A – 1 unit / 40 acres |

Area Information

Property History

| | | | |
|-----------------------------|-----------------------------|-----------------|-----|
| <i>Zoning Jurisdiction:</i> | Extraterritorial Area (ETA) | <i>Zoned:</i> | N/A |
| <i>Township:</i> | Apple Creek (organized) | <i>Platted:</i> | N/A |
| <i>Neighborhood:</i> | Not Platted / Unnamed | <i>Annexed:</i> | N/A |

Project Narrative

Donald and ReNay Zundel, Apple Creek Farms, are requesting approval of a special use permit for a Major Agriculture Recreation use on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township.

A Major Agriculture Recreation use is any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use. Such uses include but are not limited to education related events and tours, a celebration, ceremony, wedding, reception, corporate function, u-pick produce, Christmas tree farm, pumpkin patches, corn maze and hayrides for someone other than the property owner.

A Major Agriculture Recreation use shall not exceed an occupancy of two-hundred fifty (250) people at any one time and shall not exceed thirty (30) days per calendar year.

A zoning ordinance text amendment to allow a Major Agriculture Recreation use as a special use permit and criteria for approval was included in a zoning ordinance text amendment and approved by the Planning and Zoning Commission at their meeting on May 22, 2024. The Board of City Commissioners is scheduled to hold a public hearing and take final action on this text amendment at their June 25, 2024 meeting.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:

A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.



The northern portion of the property has been identified as Rural Residential (RR) and the southern property, located within the special flood hazard area, has been identified as Parks and Open Space (PKOS) in the Future Land Use Plan. The RR areas are places for country living with convenient proximity to city life. The PKOS

are areas kept in a largely natural state providing many important functions for the community and ecosystem. Goals and objectives of this plan as they relate to the proposed special use permit are referenced in review standards below.

Adjacent land uses include rural residential to the north and west and to the east, across 80th Street

(continued)

SE and agriculture zoned properties with single-family dwellings to the south, across Apple Creek Road.

Public Engagement

Apple Creek Township was notified of this request on June 6, 2024.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 14 and 21, and 60 letters were mailed to the owners of nearby properties on June 14, 2024.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Special Use Permit

Special regulations established for this type of use have been met (Section 14-03-08(1)c)

Yes. Agriculture Recreation, Major standards outlined in 14-03-08(4)aa have been, or will be, met by the proposed special use:

“a. The use is ancillary to the primary agricultural use.”

According to the information submitted with the application, this requirement would be met. The proposed use is ancillary to the existing primary agricultural use.

“b. The lot in which the use is located is at least thirty-five (35) acres in area.”

According to the information submitted with the application, this requirement would be met. The property consists of 39.1 acres.

“c. The lot in which the use is located is outside the Urban Service Area Boundary (USAB).”

According to the information submitted with the application, this requirement would be met. The property is outside the USAB.

“d. Attendance is limited to two hundred and fifty (250) persons in attendance at any one time.”

According to the information submitted with the application, this requirement would be met.

“e. No more than thirty (30) days per calendar year, not to include minor agriculture recreation uses.”

This requirement will be met prior to commencing operations.

“f. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations).”

This requirement will be met prior to commencing operations.

“g. All parking areas shall be mowed and designed to prevent debris from the site entering the public right-of-way and be arranged to provide for orderly and safe loading or unloading and parking.”

According to the information submitted with the application, this requirement would be met.

“h. Access to buildings or areas associated with the agriculture recreation use shall be an all-

weather access and be designed for safe and orderly access for patrons and emergency services.”

According to the information submitted with the application, this requirement would be met.

“i. Sound generated by the use shall meet the requirements outlined in Chapter 08-10 of the City Code of Ordinance.”

This requirement will be met prior to commencing operations.

“j. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.”

This requirement will be met prior to commencing operations.

“k. The use is setback a minimum of 50 feet adjacent to properties with a residential use, zoning, or land use classification.”

According to the information submitted with the application, this requirement would be met.

“l. A site plan, and if necessary, a stormwater management plan is submitted for review and approval prior to the issuance of a building permit or commencement of operations.”

According to the information submitted with the application, this requirement would be met.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed special use permit (Section 14-03-08(1)c)

Yes. The proposed special use permit would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

Together 2045 Bismarck’s Comprehensive Plan is adhered to with the proposed Special Use Permit (Section 14-03-08(1)c)

Yes. The proposed Special Use Permit adheres to the overall goals and objectives of the comprehensive plan.

Proper administrative procedures related to the request are being followed (Section 14-03-08(1))

Yes. All administrative procedures of the City Code of Ordinances have been followed to date. The applicant has submitted a complete application for a special use permit, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission. A public hearing has been scheduled by the Planning and Zoning Commission for this request, and all requirements for notice of this hearing have been met, as documented in this report above.

The public health, safety and general welfare will not be adversely impacted by the proposed special use permit (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed special use permit would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the special use permit for a Major Agriculture Recreation use on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township.

Attachments

1. Draft Special Use Permit Resolution
2. Applicant Statement
3. Zoning and Plan Reference Map
4. Proposed Site Exhibit

(continued)

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov

**RESOLUTION OF
BISMARCK PLANNING AND ZONING COMMISSION**

**SPECIAL USE PERMIT FOR MAJOR AGRICULTURE RECREATION USE
(SUP2024-008)**

WHEREAS, certain special uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, must be granted approval by the Planning and Zoning Commission within certain zoning districts, as established by Section 14-03-08 of the Bismarck Code of City Ordinances; and

WHEREAS, the owners of property described as Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township have requested approval of a special use permit to allow an Major Agriculture Recreation use in the A – Agricultural zoning district on said property; and

WHEREAS, The Bismarck Planning and Zoning Commission held a public hearing on June 26, 2024 regarding this request for a special use permit and considered public testimony and findings of fact related to the request.

NOW, THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Bismarck, North Dakota, that the application for a special use permit Major Agriculture Recreation use on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township is hereby approved, subject to the following conditions:

1. The special use is put into use within twenty-four (24) months of the adoption of this resolution.
2. All other terms and conditions of the zoning ordinance are met.

Adopted this 26th Day of June 2024.

CERTIFICATE

I, Ben Ehreth, do hereby certify that I am the duly appointed, qualified Community Development Director of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct copy of a resolution adopted at a legally convened meeting of the Planning and Zoning Commission held on this June 26, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand.

Ben Ehreth
Community Development Director
Bismarck, North Dakota

Date



Zoning and Plan Reference Map

SUP2024-008

APPLE CREEK FARM

Zoning Districts

| | |
|------------|-------------------------------|
| A | Agriculture |
| RR | Rural Residential |
| R5 | Residential |
| RMH | Manufactured Home Residential |
| R10 | Residential |
| RM | Residential Multifamily |
| RT | Residential (Offices) |
| HM | Health and Medical |
| CA | Commercial |
| CG | Commercial |
| MA | Industrial |
| MB | Industrial |
| PUD | Planned Unit Development |
| DC | Downtown Core |
| DF | Downtown Fringe |

Future Land Use Plan

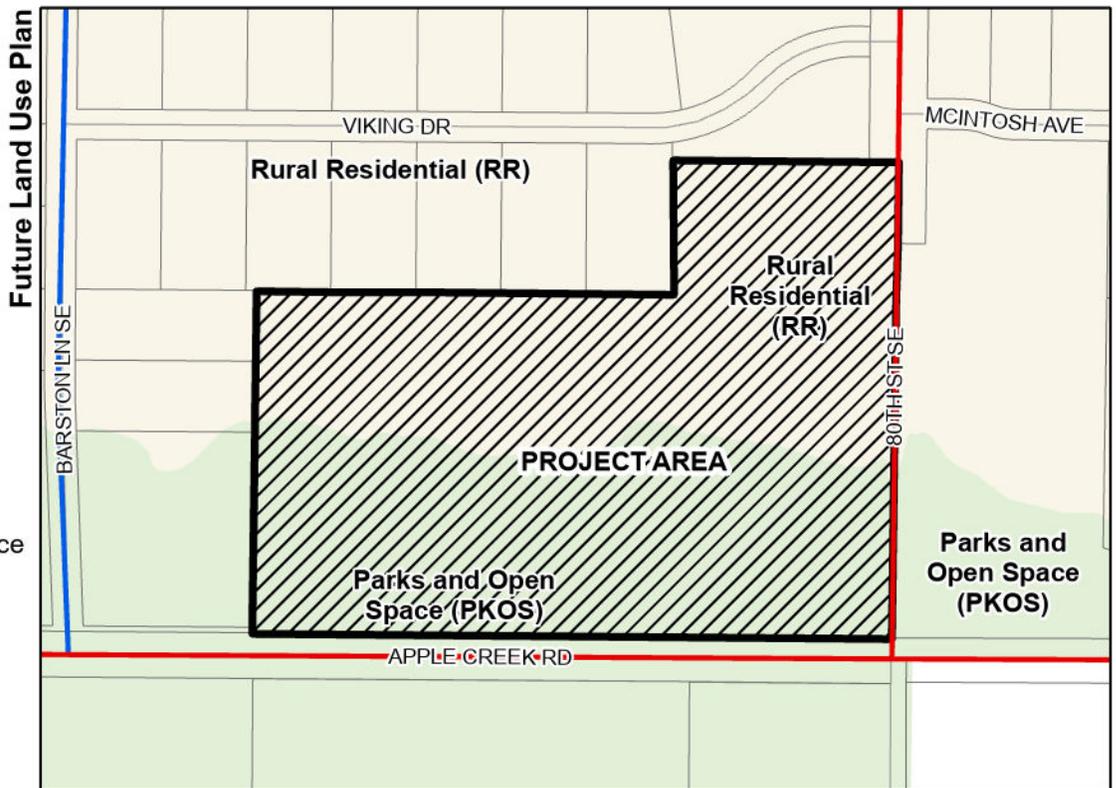
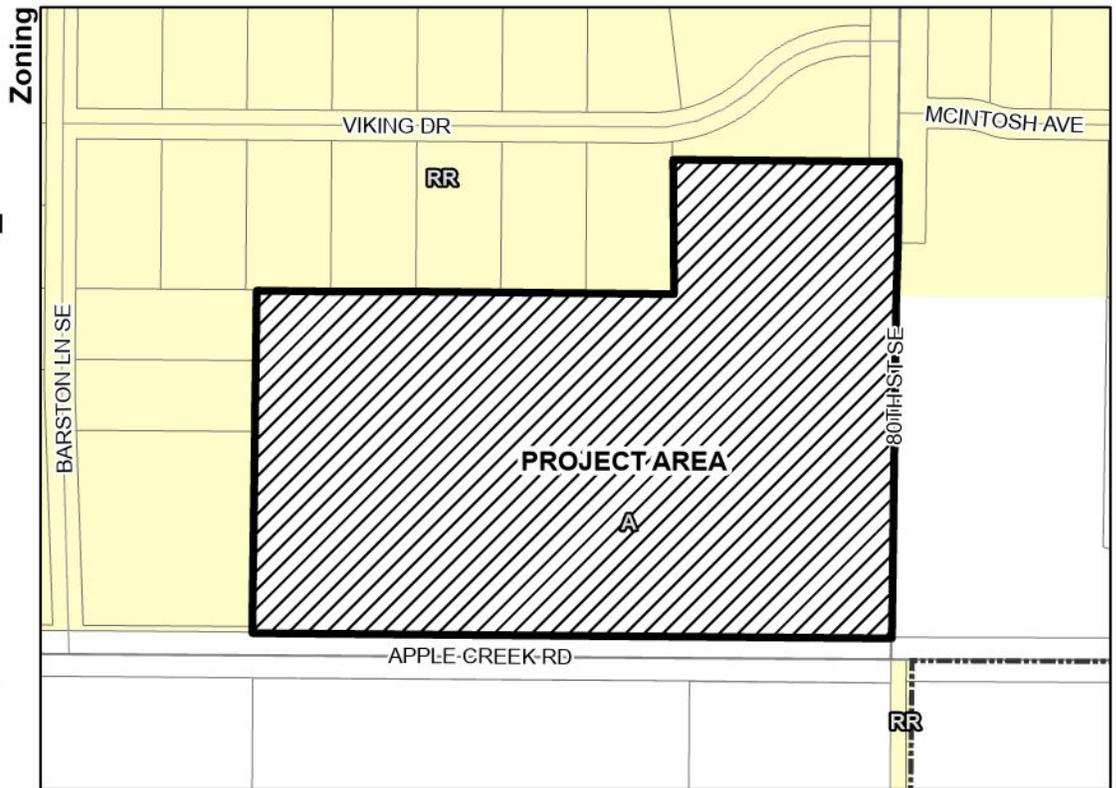
| | |
|----------------|-----------------------------|
| UN | Urban |
| NMU | Neighborhood Mixed Use |
| CMU | Community Mixed Use |
| DMU | Destination Mixed Use |
| DT | Downtown |
| IND | Industrial |
| IF | Industrial Flex |
| IMU | Industrial Mixed Use |
| INS | Institutional |
| RR | Rural Residential |
| TR | Transitional Rural |
| PKOS | Parks/Open Space |
| URA/URB | Urban Reserve Mid/Long-Term |

Active Mobility Plan

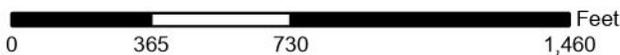
- Future Shared Trail

Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.



City of Bismarck
Community Development
Planning Division
June 21, 2024

Apple Creek Farm LLC
ReNay Zundel
750 80th St SE
Bismarck, ND. 59501
April 18, 2024

Burleigh County Planning and Zoning
P.O. Box 5518
Bismarck, ND 58506-5518

Dear Burleigh County Planning Commission Members,

Please accept this application in consideration of a special use permit within the proposed draft ordinance, Agriculture Major.

Apple Creek Farm LLC raises alpacas and processes their fleece into yarn and products, also chickens, miniature highlander cattle and seasonal sheep. The original 100+ year old historic barn is on the property. Our gardens produce pumpkins, fruit, vegetables and flowers. Apple Creek Farm has also been adopted by the St. Joseph Montessori School in Mandan for agricultural education and assistance with farm activities.

We do not intend to become an event venue for the public to rent for large weddings and events; rather, host our own small, agriculture based events with an occasional small private event. We will not be advertising a venue for rent and will not have signage along the road. Our goal is to host small gatherings in a peaceful rural setting, educating and enjoying North Dakota's agriculture in a low-key relaxed environment. North Dakota is a rural, ag based state, though there are very few farms open to the public. We enjoy sharing a unique experience with the community.

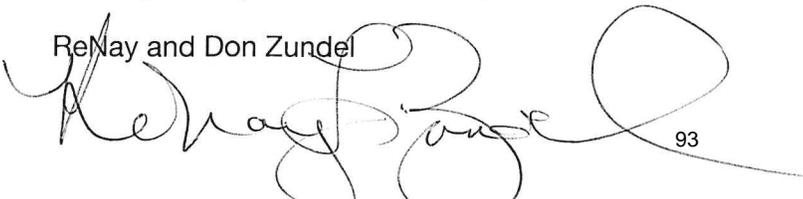
The majority of the events will be held outdoors between May and October. If the barn is to be used for an event, we understand it must conform to IBC and IFC as adopted by the City of Bismarck. Traffic impact/dust will be minimal due to 80th St SE being paved and the limited number of events and guests allowed. We have ample parking available and access for emergency vehicles.

Apple Creek Farm anticipates agricultural event uses as follows:

- 1) Farm picnic days to include local musicians, 2 food vendors and alpaca education and garden tours.
- 2) National Alpaca Farm Days. An event, generally in September, when alpaca farms throughout North America open to the public to tour, shop, experience and learn about alpacas.
- 3) Farm to Table dinners, hosted by Mabel's All Day, licensed food truck, using produce grown on the farm. Approximately 40 guests, quiet evening with food and music.
- 4) Produce, pumpkin and alpaca product sales.
- 5) Garden tours and u-pick.
- 6) Flower and craft classes as they relate to farm-grown products.
- 7) Photography sessions and yoga with alpacas.
- 8) Fall harvest picnic for pumpkin picking, apple pressing, garden harvest.
- 9) Small events, generally less than 100 guests for graduation, birthday, anniversary or weddings.

We look forward to sharing this special place.
Thank you for your consideration,

ReNay and Don Zundel

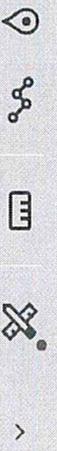
A handwritten signature in black ink, appearing to read 'ReNay and Don Zundel', with a large, stylized flourish extending to the right. The signature is written over the printed name.

Welcome to the new Google Earth! A new look, designed to speed up how you create and share

See help center

File View Add Tools Help

750 80th St SE, Bismarck, ND

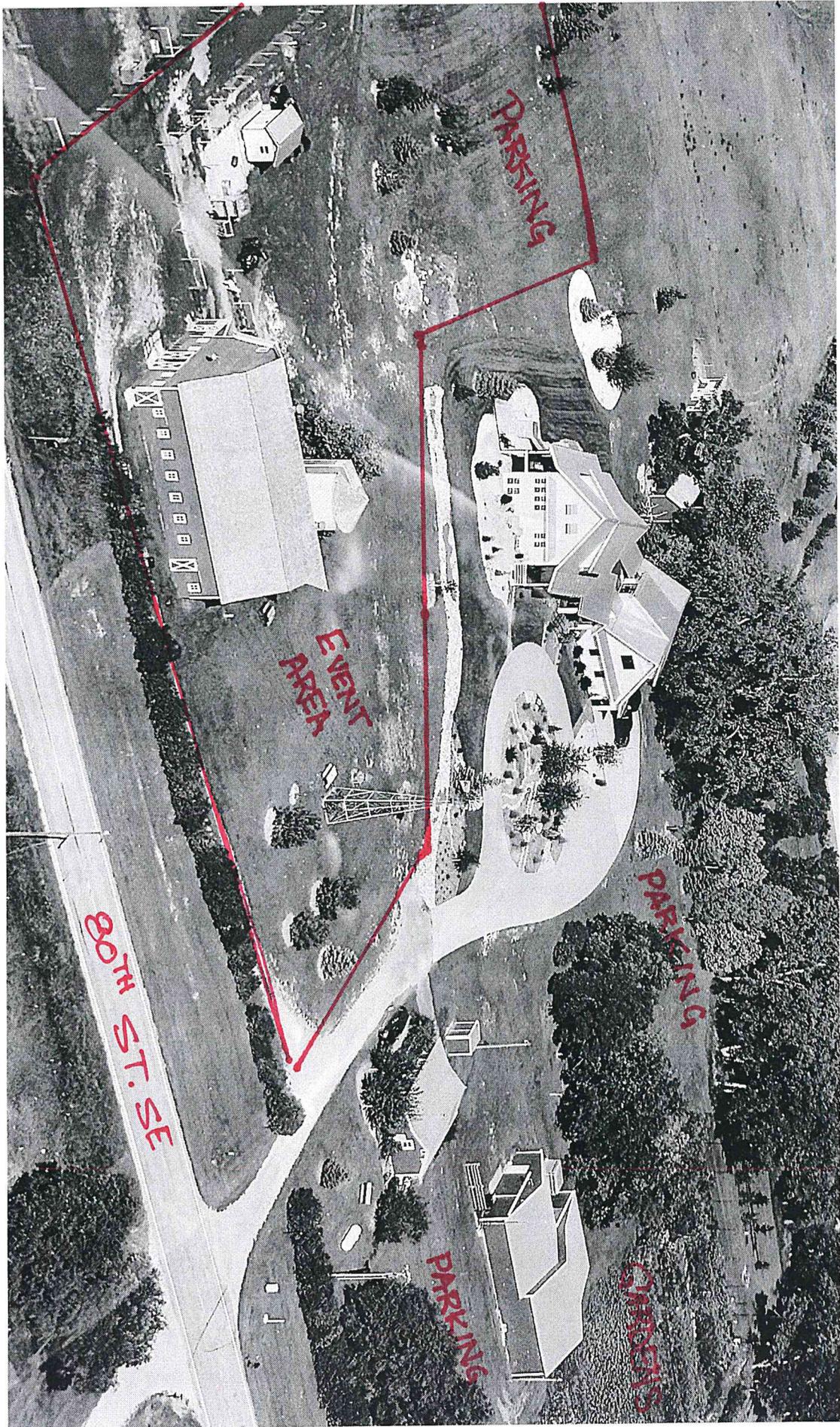


Layers

Google 100% Data attribution 5/20/2012

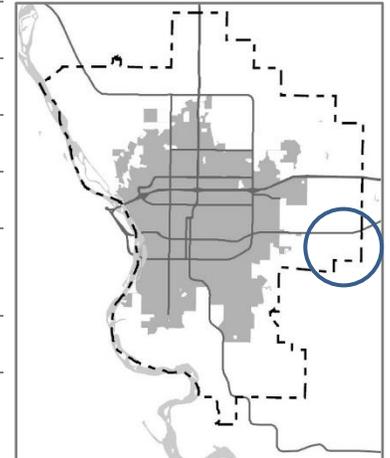
200 m Camera: 2,034 m 46°47'53"N 100°40'48"W 505 m





Project Summary

| | |
|------------------------------|---|
| <i>Title:</i> | Apple Creek Cottage |
| <i>Status:</i> | Planning and Zoning Commission - Public Hearing |
| <i>Property Owner(s):</i> | Donald and ReNay Zundel |
| <i>Project Contact:</i> | ReNay Zundel |
| <i>Project Location:</i> | Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township |
| <i>Project Size:</i> | 39.19 acres |
| <i>Applicant Request:</i> | Approval of a special use permit for an accessory dwelling unit (ADU) |
| <i>Staff Recommendation:</i> | Approve |



Site Information

| <i>Existing Conditions</i> | | <i>Proposed Conditions</i> | |
|----------------------------|---|----------------------------|---|
| <i>Lots/Blocks:</i> | 1 parcel | <i>Lots/Blocks:</i> | 1 parcel |
| <i>Land Use:</i> | Rural residential | <i>Land Use:</i> | Rural residential |
| <i>Future Land Use:</i> | Parks and Open Space (PKOS) Rural Residential (RR) | <i>Future Land Use:</i> | Parks and Open Space (PKOS) Rural Residential (RR) |
| <i>Zoning:</i> | A – Agricultural | <i>Zoning:</i> | A – Agricultural |
| <i>Uses Allowed:</i> | A – Agriculture | <i>Uses Allowed:</i> | A – Agriculture |
| <i>Max Density:</i> | A – 1 unit / 40 acres | <i>Max Density:</i> | A – 1 unit / 40 acres |

Area Information

Property History

| | | | |
|-----------------------------|-----------------------------|-----------------|-----|
| <i>Zoning Jurisdiction:</i> | Extraterritorial Area (ETA) | <i>Zoned:</i> | N/A |
| <i>Township:</i> | Apple Creek (organized) | <i>Platted:</i> | N/A |
| <i>Neighborhood:</i> | Not Platted / Unnamed | <i>Annexed:</i> | N/A |

Project Narrative

Donald and ReNay Zundel, Apple Creek Farms are requesting approval of a special use permit for an Accessory Dwelling Unit (ADU) on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township.

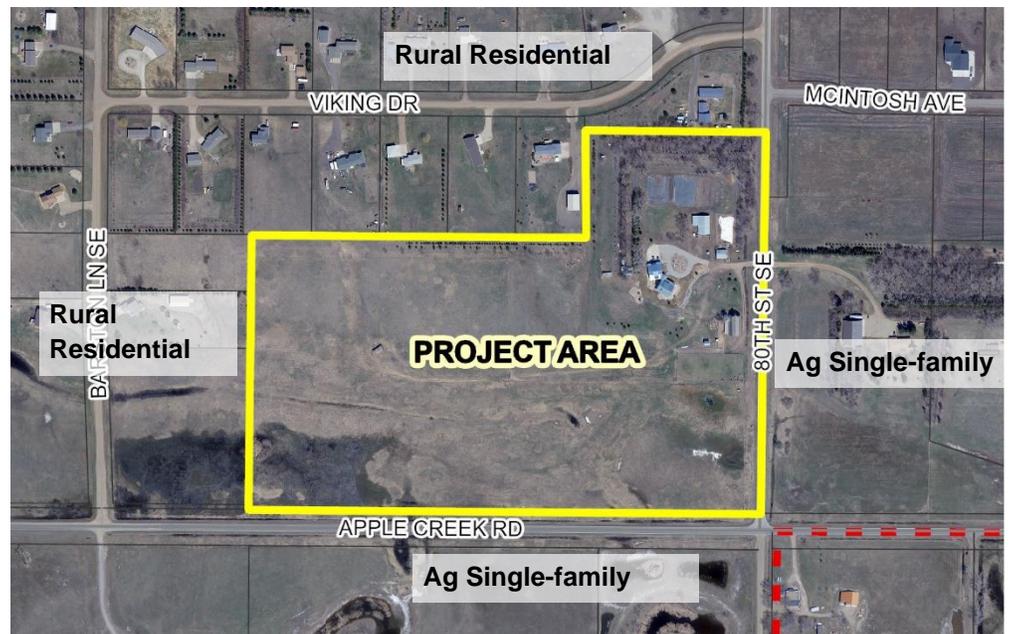
An ADU is a separate and complete dwelling unit established in conjunction with, and ancillary to, a principal single-family dwelling unit. The

Proposed ADU would be located within an existing 750 square foot accessory building and includes one bedroom, office, bathroom, living room and kitchen. The accessory building has been located on the property for since approximately 1960.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:

A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.



The northern portion of the property has been identified as Rural Residential (RR) and the southern property, located within the special flood hazard area, has been identified as Parks and Open Space (PKOS) in the Future Land Use Plan. The RR areas are places for country living with convenient proximity to city life. The PKOS are areas kept in a largely natural state providing many important functions for the community and ecosystem. Goals and objectives of this plan as they relate to the proposed special use permit are referenced in review standards below.

Adjacent land uses include rural residential to the north and west and to the east, across 80th Street

SE and agriculture zoned properties with single-family dwellings to the south, across Apple Creek Road.

Public Engagement

Apple Creek Township was notified of this request on June 6, 2024.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 14 and 21, and 60 letters were mailed to the owners of nearby properties on June 14, 2024.

(continued)

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Special Use Permit

Special regulations established for this type of use have been met (Section 14-03-08(1)c)

Yes. *Accessory dwelling unit standards outlined in 14-03-08(4)y(3) have been, or will be, met by the proposed special use:*

“a. No more than one accessory dwelling unit may be permitted on each lot or parcel.”

According to the information submitted with the application, this requirement would be met. Only one accessory dwelling unit would be located on the property.

“b. An accessory dwelling unit must be contained completely within the principal structure on the lot or parcel, or contained within an accessory structure that meets all requirements of this Code, including size and setback requirements of the underlying zoning district. The height of any accessory dwelling unit may be up to twenty-five (25) feet.”

The accessory dwelling unit is located within the A – Agriculture zoning district and meets building size and height requirements for this zoning district. The accessory dwelling unit does not

meet the front yard setback requirement for this zoning district. The property is adjacent to an arterial roadway (80th Street SE) and a 175-foot front yard setback, measured from the property line, would be required for a new structure. However, this structure is a legal non-conforming use and may remain in place in accordance with Section 14-03-09 of the City Code of Ordinances (Non-conforming uses).

“c. The principal or accessory dwelling unit must be occupied by the owner of the subject parcel as a legal residence for more than six (6) months of any given year. The home may not be owned by a corporation, but the owner-occupant may be a benefited person in a private trust or life estate. The owner-occupancy requirement applies to the applicant as well as all subsequent owners of the property.”

According to the information submitted with the application, this requirement would be met. The property owners reside at this property for more than 6 months of any given year.

“d. At least one off-street parking space shall be provided for an accessory dwelling, in addition to any parking required for the principal dwelling unit on the lot. However, in such cases where existing conditions render additional parking infeasible, the applicant may submit a parking plan to demonstrate how on-street facilities or other methods are sufficient to meet anticipated parking demand, such as the dwelling unit being reserved for a class or individual who does not need to store a personal vehicle on-site.”

According to the information submitted with the application, this requirement would be met. There are areas within the property and adjacent to the proposed accessory dwelling unit designated for parking.

“e1. No accessory dwelling unit may include more than one (1) bedroom.”

According to the information submitted with the application, this requirement would be met. The proposed accessory dwelling unit includes one bedroom.

“e2. The floor area of an accessory dwelling unit may not be greater than 800 square feet or less than 300 square feet on any lot or parcel five (5) acres in area or less. The floor area of an accessory dwelling unit may be up to 1,200 square feet on any lot or parcel that is greater than five (5) acres in area.”

According to the information submitted with the application, this requirement would be met. The proposed accessory dwelling unit is 750 square feet.

“f. An accessory dwelling unit on any lot or parcel that does not conform to the minimum lot size requirement of the underlying zoning district may only be permitted inside the principal building.”

According to the information submitted with the application, this requirement would be met. The property is 39.1 acres and is an aliquot description.

“g. An accessory dwelling unit must be connected to public utilities if available on the lot or parcel. If the lot is serviced by an on-site sewage treatment facility, the applicant must show that sufficient sewage treatment capacity will be available to meet anticipated needs.”

According to the information submitted with the application, this requirement would be met. The accessory dwelling unit would have access to rural water and a private on site septic system.

“h. An accessory dwelling unit must comply with all residential building code requirements outlined in Title 4 of the Bismarck Code of Ordinances.”

Adherence to building and fire codes would be verified by the Building Inspection Division and

Burleigh County Rural Fire prior to issuance of a building permit.

“i. An accessory dwelling unit may be occupied by no more than one family, as defined by Title 14 of the Bismarck Code of Ordinances.”

According to the information submitted with the application, this requirement would be met.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed special use permit (Section 14-03-08(1)c)

Yes. The proposed special use permit would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

Together 2045 Bismarck’s Comprehensive Plan is adhered to with the proposed Special Use Permit (Section 14-03-08(1)c)

Yes. The proposed Special Use Permit adheres to the overall goals and objectives of the comprehensive plan.

Proper administrative procedures related to the request are being followed (Section 14-03-08(1))

Yes. All administrative procedures of the City Code of Ordinances have been followed to date. The applicant has submitted a complete application for a special use permit, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission. A public hearing has been scheduled by the Planning and Zoning Commission for this request, and all requirements for notice of this hearing have been met, as documented in this report above.

The public health, safety and general welfare will not be adversely impacted by the proposed special use permit (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff

(continued)

find that the proposed special use permit would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of a special use permit for an Accessory

Dwelling Unit (ADU) on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township.

Attachments

1. Draft Special Use Permit Resolution
2. Zoning and Plan Reference Map
3. Building Plan

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov

**RESOLUTION OF
BISMARCK PLANNING AND ZONING COMMISSION**

**SPECIAL USE PERMIT FOR ACCESSORY DWELLING UNIT (ADU)
IN PART OF THE SE14 OF SECTION 5, T138W-R79N/APPLE CREEK TOWNSHIP
(SUP2024-007)**

WHEREAS, certain special uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, must be granted approval by the Planning and Zoning Commission within certain zoning districts, as established by Section 14-03-08 of the Bismarck Code of City Ordinances; and

WHEREAS, the owners of property described as Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township have requested approval of a special use permit to allow an Accessory Dwelling Unit (ADU) in the A – Agricultural zoning district on said property; and

WHEREAS, The Bismarck Planning and Zoning Commission held a public hearing on June 26, 2024 regarding this request for a special use permit and considered public testimony and findings of fact related to the request.

NOW, THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Bismarck, North Dakota, that the application for a special use permit for an Accessory Dwelling Unit (ADU) on Part of the SE1/4 of Section 5, T138W-R79N/Apple Creek Township is hereby approved, subject to the following conditions:

1. The special use is put into use within twenty-four (24) months of the adoption of this resolution.
2. All other terms and conditions of the zoning ordinance are met.

Adopted this 26th Day of June 2024.

CERTIFICATE

I, Ben Ehreth, do hereby certify that I am the duly appointed, qualified Community Development Director of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct copy of a resolution adopted at a legally convened meeting of the Planning and Zoning Commission held on this June 26, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand.

Ben Ehreth
Community Development Director
Bismarck, North Dakota

Date

Zoning Districts

| | |
|------------|-------------------------------|
| A | Agriculture |
| RR | Rural Residential |
| R5 | Residential |
| RMH | Manufactured Home Residential |
| R10 | Residential |
| RM | Residential Multifamily |
| RT | Residential (Offices) |
| HM | Health and Medical |
| CA | Commercial |
| CG | Commercial |
| MA | Industrial |
| MB | Industrial |
| PUD | Planned Unit Development |
| DC | Downtown Core |
| DF | Downtown Fringe |

Future Land Use Plan

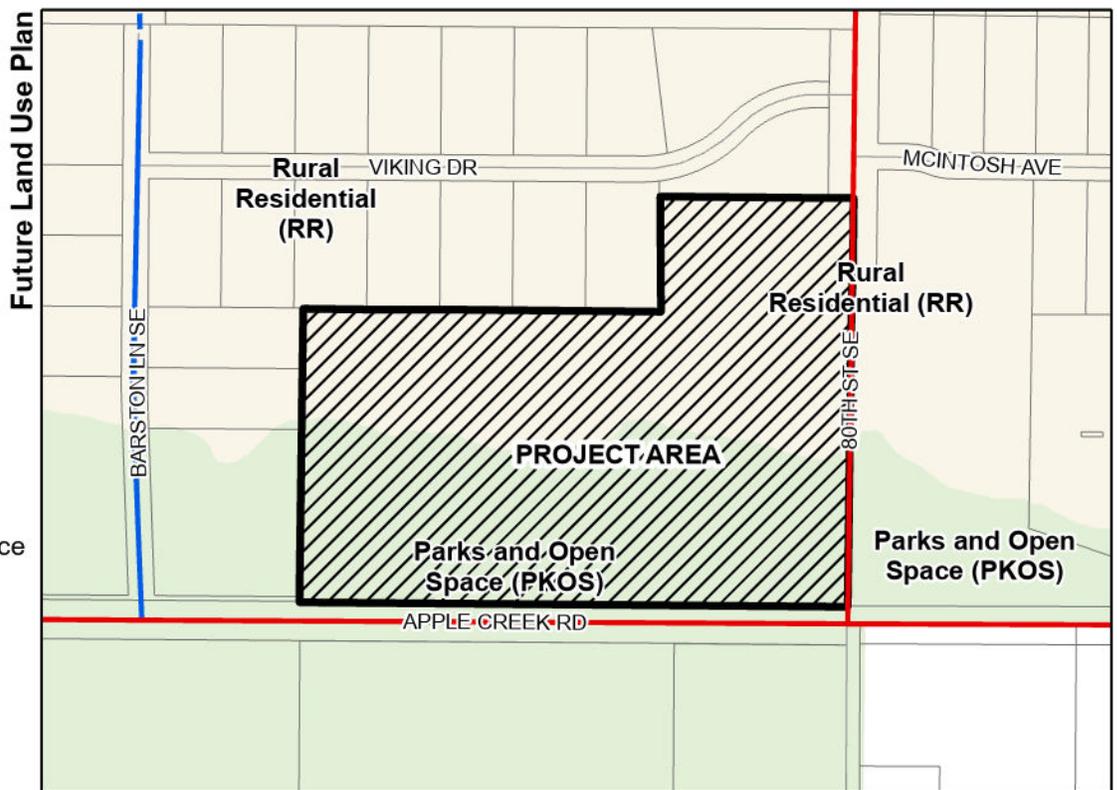
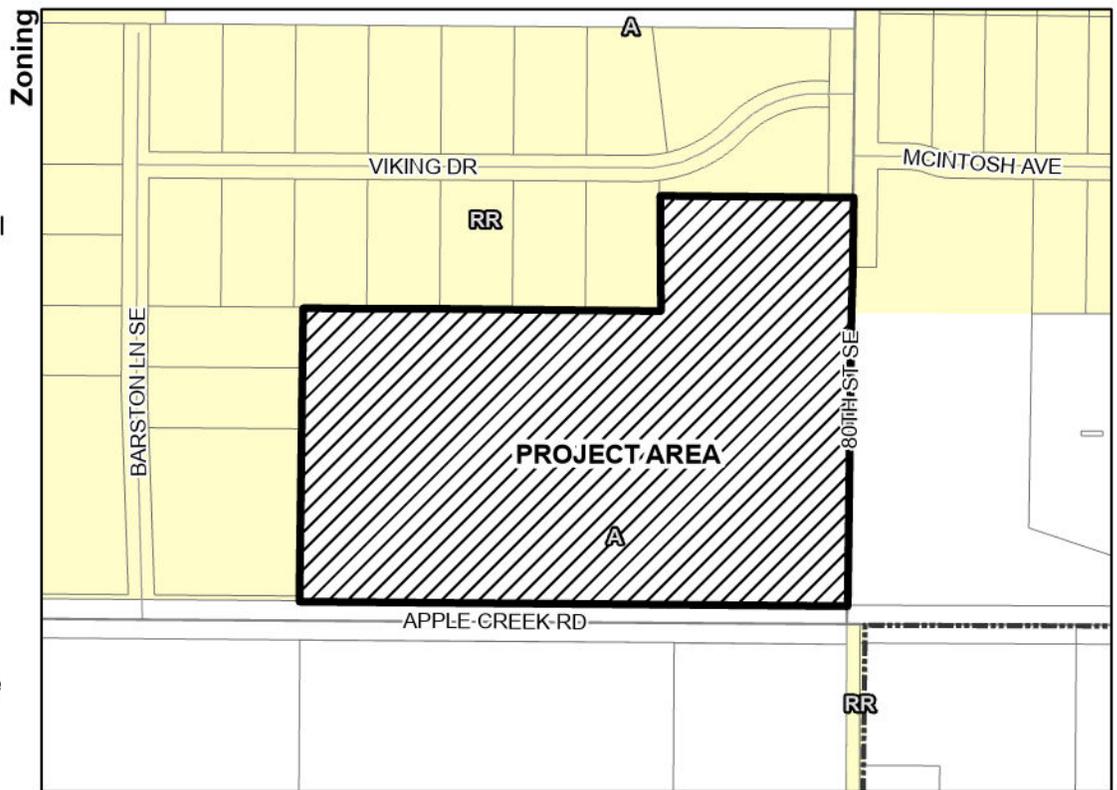
| | |
|----------------|-----------------------------|
| UN | Urban |
| NMU | Neighborhood Mixed Use |
| CMU | Community Mixed Use |
| DMU | Destination Mixed Use |
| DT | Downtown |
| IND | Industrial |
| IF | Industrial Flex |
| IMU | Industrial Mixed Use |
| INS | Institutional |
| RR | Rural Residential |
| TR | Transitional Rural |
| PKOS | Parks/Open Space |
| URA/URB | Urban Reserve Mid/Long-Term |

Active Mobility Plan

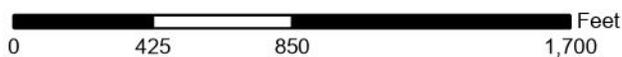
- Future Shared Trail

Major Street Plan

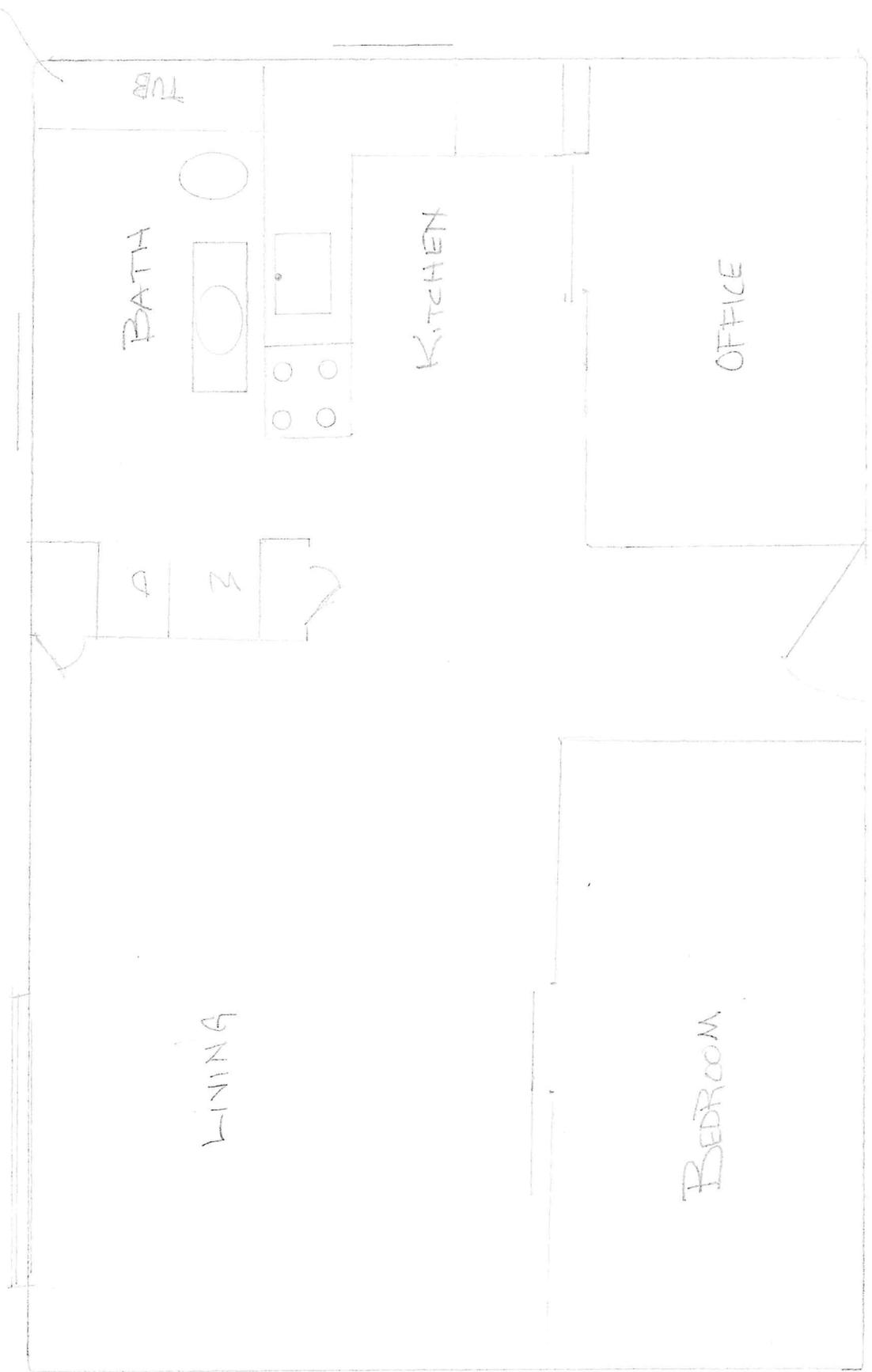
- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.



36'



25'

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
May 22, 2024**

The Bismarck Planning & Zoning Commission met on May 22, 2024, 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 Brian Bitner, Robert Field, Cole Johnson, Daniel Lukens (via Zoom), Gabe Schell, Mike Schmitz (via Zoom), Mike Schwartz, Sheldon Sivak, Trent Wangen, and Paul Zent.

Commissioner Larson was absent.

Staff members present were Brady Blaskowski – Building Official, Janelle Combs – City Attorney, Ben Ehreth – Community Development Director, Isak Johnson – Planner, Daniel Nairn – Planning Manager, Lauren Oster – Planner, and Jenny Wollmuth – Senior Planner.

MINUTES

Chair Schwartz called for consideration of the minutes of the April 24, 2024, meeting.

MOTION: Commissioner Zent made a motion to approve the minutes of the April 24, 2024, meeting, as presented. Commissioner Johnson seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

CONSIDERATION

**2. MISTY WATERS, LOTS 30-36 AND 38-39, BLOCK 1
PLANNED UNIT DEVELOPMENT AMENDMENT**

**3. PART OF NORTHERN SKY ADDITION AND
ALL OF NORTHERN SKY SECOND ADDITION FIRST REPLAT
ZONING MAP AMENDMENT**

**4. EAST CENTURY AVENUE AND 52ND STREET
MAJOR STREET PLAN AMENDMENT**

Commissioner Bitner raised concerns about pending legal matters on the property in Misty Waters. City Attorney Combs stated the city is required to act on an application as the legal matters do not involve the city. At this time, HOA litigation is not a reason to delay this project.

MOTION: Commissioner Schmitz made a motion to approve consent agenda items 2, 3 and 4, calling for public hearings as recommended by staff. Commissioner Zent seconded the motion, and it was approved with Commissioners Johnson, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion. Commissioners Bitner, Field, Sivak, and Wangen voted against the motion.

**CONTINUED PUBLIC HEARING
MAJOR SUBDIVISION FINAL PLAT / ZONING MAP AMENDMENT
FETTIG SUBDIVISION**

Chair Schwartz called for the continued public hearing on the zoning map amendment and major subdivision final plat for Fettig Subdivision. The property is located east of Bismarck, between 52nd Street SE and 66th Street SE, along the south side of East Main Avenue / County Highway 10 (a replat of all of Highway Subdivision and Part of the NE¼ of Section 6, T138N-R79W/Apple Creek Township).

Ms. Wollmuth explained that since the April 24, 2024, meeting of the Planning and Zoning Commission, staff have created a development agreement that would require a signed annexation petition for the entire subdivision be submitted to the City and that the City will hold said petition until no less than twenty (20) years after the date of the agreement or at such time when City sanitary sewer services are within 500 feet and available for use with required rights-of-way or easements to access the utility/sewer whichever is sooner, at which point the petition may be submitted to the Board of City Commissioners for final action and consideration for annexation, following standard procedures in place at the time.

The signed annexation petition would be required prior to recording the proposed plat and finalization of the zoning map amendment.

The owner and their consulting engineer have agreed to the provisions outlined in the development agreement.

Ms. Wollmuth provided an overview of the requests and stated that, staff recommends review of the development agreement and the above findings and taking action on the request.

Commissioner Schell asked why the Development Agreement is allowable for this situation. Ms. Combs explained that after research of the exclusions in state law, and based on the proximity of the proposed plat to city limits, staff was able to draft a legal Development Agreement.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co. explained that the applicant is satisfied with the Development Agreement and asked the commissioners to recommend approval to the City Commission.

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

MOTION: Based on the findings contained in the staff report, Commissioner Bitner made a motion to approve the zoning map amendment and major subdivision final plat for Fettig Subdivision with the condition that a signed annexation petition is submitted prior to recording the proposed plat and that a Development Agreement is approved by the City Commission prior to recording the proposed plat, . Commissioner Zent seconded the motion and it was approved with Commissioners Bitner, Field, Johnson, Lukens, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion. Commissioner Schell voted against the motion and explained that he feels there are components to the development agreement that remain unaddressed.

**PUBLIC HEARING – MAJOR SUBDIVISION PLAT / ZONING MAP AMENDMENT
CENTRAL OUTPOST SUBDIVISION**

Chair Schwartz called for the public hearing on the zoning map amendment and major subdivision final plat titled Central Outpost Subdivision. The property is located northeast of Bismarck, east of 80th Street NE and on the north side of 43rd Avenue NE (E ½ of E ½ of SW ¼ of Section 16, T139N-R79W).

Mr. Nairn provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed major subdivision final plat and zoning map amendment plat would not adversely impact the public health, safety, and general welfare.

Mr. Nairn said, based on the findings, staff recommends approval of the zoning map amendment from the A – Agricultural zoning district to the PUD – Planned Unit Development zoning district and major subdivision final plat for Central Outpost Subdivision, as presented.

Commissioner Schell asked if the improvements to 43rd Avenue and 80th Street were only in the proximity of the plat or if it continued to the west. Mr. Nairn stated that the Burleigh County Commission still needs to approve the rights-of-way and any improvements farther west is the responsibility of the county. Commissioner Bitner stated that the county is responsible for the road where the pavement ends. Casey Einrem, Burleigh County Highway Department, stated that the applicant would be required to pave 43rd Avenue from where the existing asphalt ends and that they have submitted a waiver for paving the roads on the east and north side of the plat at this time.

Chair Schwartz opened the public hearing.

Matt Weeks, Land Surveyor, offered to answer any questions. Commissioner Schell mentioned the site plan includes the lower third of the area and asked if there were any uses for the remainder of the property. Mr. Weeks stated there are no plans for the northern portion of the plat at this time.

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

MOTION: Commissioner Bitner made a motion to approve the zoning map amendment and major subdivision final plat titled Central Outpost Subdivision. Commissioner Wangen seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – MAJOR SUBDIVISION PLAT / ZONING MAP AMENDMENT
WEST REGION MEDICAL SECOND ADDITION**

Chair Schwartz called for the public hearing on the zoning map amendment from the CG – Commercial and RT – Residential zoning districts to the CG – Commercial zoning district and major subdivision final plat for West Region Medical Second Addition. The project area is located in north-central Bismarck, north of East Century Avenue between State Street and North 19th Street, along the south side of East Calgary Avenue (being a replat of all of West Region Medical Addition).

Ms. Wollmuth provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed future land use plan amendment would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings, staff recommends approval of the zoning map amendment from the RT – Residential and CG – Commercial zoning districts to the CG – Commercial zoning district and major subdivision final plat for West Region Medical Second Addition, as presented.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co., was available to answer any questions.

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

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the zoning map amendment and major subdivision final plat for West Region Medical Second Addition. Commissioner Sivak seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT BROOKFIELD ESTATES, LOTS 10-11, BLOCK 5

Chair Schwartz called for the public hearing on a special use permit to allow a filling station on Lots 10-11, Block 5, Brookfield Estates.

Ms. Wollmuth provided an overview of the request, noting that the property is zoned CG – Commercial and has been for the entire time it has been within the City's extraterritorial area. She stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed special use permit would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings, staff recommends approval of the special use permit to allow a filling station on Lots 10-11, Block 5, Brookfield Estates, as presented with the following conditions:

1. A traffic impact study be completed prior to administrative approval of the formal site plan and all improvements required as a result of the traffic impact study be installed in conjunction with site development.
2. Belaire Drive be paved by the applicant from the western property boundary of Lot 10 east to 80th Street NE in conjunction with site development.
3. Approval of a lot modification request to combine Lot 10 and Lot 11 into one parcel.
4. Additional landscaping and lighting standards to mitigate off-site impacts of the filling station must be included and approved during the formal site plan review process.

Commissioner Schell asked who would be responsible for the traffic impact study. Casey Einrem, Burleigh County Highway Department, explained the County Commission could agree to cost sharing via a separate development agreement, but noted that it would be a Burleigh County Commission decision..

Chair Schwartz asked about the zoning of the surrounding lots. Ms. Wollmuth explained that the surrounding lots are zoned RR – Rural Residential and that Lots 10 and 11 were zoned commercial by the Burleigh County Commission when the subdivision was platted. Ms. Wollmuth also indicated that this area became part of the City’s extraterritorial jurisdiction or ETA in 1982. . Commissioner Bitner recused himself from the vote on this item because he has personal interest in the item, noting that he has recently purchased property from the developer.

Chair Schwartz asked about the public comments received by staff. Ms. Wollmuth explained that approximately a dozen comments have been received, asking the commission to deny this item.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co, explained that the applicant is trying to provide a service to the area along with providing a landscaping buffer.

Commissioner Schell asked what the allowed uses for this property have been in the past.

Richard Sander, Gibbs Township chairman, questioned why an access road will go through Lot 11, noted on the plat as public use. Mr. Niemiller returned to explain that there is no explanation or definition of the public use noted on the plat and the lot has been under private ownership since the property was platted.

Corey Dutchuk, a neighbor of the proposed project, stated that he does not support the project and he was told, upon the purchase of his property, the public use area would eventually be a park.

Darren Schneider, another neighbor, stated he is against the proposed use. He is concerned with traffic, snow removal, and potential flooding.

Chuck Bosch, resident of Brookfield Estates, stated they have an HOA and he has received several calls in opposition to this proposal. He noted that their subdivision covenants identify this lot and a lot in the western portion of the plat as public use. Mr. Bosch opposes the special use permit due to concerns with traffic and flooding issues.

Commissioner Schell asked about the second public use area. Mr. Bosch stated the owner of the area had vacated it and it has been combined with his property.

Commissioner Zent asked for expiration date on the covenants. Mr. Bosch stated that they would continue unless property owners vote them out.

Commissioner Field asked who is paying the property taxes and stated whoever owns the property should be able to do what they wish with it.

Mackenzie Dutchuk stated the maps staff used are inaccurate. She noted homes in the area are under construction and not shown on the maps. She is against the proposed filling station due to increased traffic, potential crimes, and potential danger to children.

Dwight Eckert questioned whether the traffic impact study could change the plan for this filling station. Commissioner Bitner explained the traffic impact study decides the best plan for the roadways around the property to make the flows of traffic safer. Casey Einrem explained that the traffic impact study will determine things like turn lanes, traffic lights, roundabouts, etc. After the options are chosen, a development agreement would be created and approved by the Burleigh County Commission to determine if the County or developer will be financially responsible for the costs of the roadway improvements. Mr. Einrem then explained the timing of traffic impact studies.

Kirby Evanger spoke against the project due to fumes from gasoline, traffic, safety, noise and light pollution, future harm to groundwater, and market value of homes. He also doesn't believe a gas station is needed at this location. Commissioner Field asked Mr. Evanger to provide an alternative use for this location. Mr. Evanger said he would like to see anything other than a gas station.

Jean and Kelly Schafer explained that they disagree with the construction of a gas station because it is surrounded by residential properties. They believe it will decrease property values. They have a well and are concerned with the environmental impact of a leak. Commissioner Field explained that he spent his career repairing tanks and they don't leak frequently.

Don Charvat is concerned with hazardous chemicals being adjacent to a residential neighborhood along with the mess that a gas station will cause.

Bill Ortman is concerned with light pollution from the traffic. He said the area floods frequently and a gas station will cause flooding to increase in his yard. He is strongly opposed to the project.

Chris Paul is opposed to the project because of noise and light pollution, along with safety concerns for his children. He is concerned with environmental and health safety issues.

Mr. Niemiller stated that 80th Street NE and US Highway 10 are both arterial roadways and are meant to handle heavy traffic. He explained that the special use permit is only the first step of the process. Commissioner Johnson asked if any discussions with rural fire had taken place regarding this project. Mr. Niemiller confirmed discussions with rural fire, and they will be involved for the remainder of the project, including site plan review and approval. He also noted that stormwater will be reviewed by both City and County staff during the site plan review process.

Tiffany Peterson explained that the difference in increased traffic from a gas station is that it will be stopping in their back yards. She is opposed due to safety concerns.

Kelly Schafer had a discussion with Commissioner Bitner about heavy truck traffic on Highway 10.

Tyson Austin spoke in favor of the project because the property is zoned for commercial uses, therefore the owner of the property should be allowed to use it as it is zoned.

Corey and Mackenzie Dutchuk returned to show photos of flooding in their neighborhood and explained how the gas station will make it worse if constructed. Mr. Niemiller explained that a stormwater management plan will be developed per City and County requirements.

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

Ms. Wollmuth explained that the paving requirement noted in the conditions for approval is only in front of Lots 10 and 11 from the western portion of Lot 10 to 80th Street. West of Lot 10 would not need to be paved.

Commissioner Johnson questioned the reason a special use permit is required. Mr. Nairn explained the criteria in the ordinance regarding a filling station, all of which are listed in the staff report. Ms. Wollmuth reiterated that staff's recommendation is to approve with the listed conditions.

MOTION: Commissioner Wangen made a motion to approve the special use permit to allow a filling station on Lots 10-11, Block 5, Brookfield Estates with the conditions:

1. A traffic impact study be completed prior to administrative approval of the formal site plan and all improvements required as a result of the traffic impact study be installed in conjunction with site development.
2. Belaire Drive be paved by the applicant from the western property boundary of Lot 10 east to 80th Street NE in conjunction with site development.
3. Approval of a lot modification request to combine Lot 10 and Lot 11 into one parcel.
4. Additional landscaping and lighting standards to mitigate off-site impacts of the filling station must be included and approved during the formal site plan review process.
5. The special use permit is put into use by May 22, 2026
6. All other terms and conditions of the zoning ordinance are met.

Commissioner Sivak seconded the motion, and it was approved with Commissioners Field, Johnson, Lukens, Schmitz, Sivak, and Wangen voting in favor of the motion. Commissioner Schell, Schwartz, and Zent voted against the motion. Commissioner Bitner recused himself from the public hearing.

Commissioner Schmitz left the meeting.

PUBLIC HEARING – SPECIAL USE PERMIT SONNET HEIGHTS SUBDIVISION FIFTH REPLAT, LOTS 1-2, BLOCK 1

Chair Schwartz called for the public hearing on a special use permit to allow a drive-through on Lots 1-2, Block 1, Sonnet Heights Subdivision Fifth Replat. The property is located in north Bismarck, west of State Street/US Highway 83 and north of 43rd Avenue NW on the west side of Ottawa Street.

Ms. Oster provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed special use permit would not adversely impact the public health, safety, and general welfare.

Ms. Oster said, based on the findings, staff recommends approval of a special use permit to allow a drive-through for a coffee shop on Lots 1-2, Block 1, Sonnet Heights Subdivision Fifth Replat.

Commissioner Schell asked about the parking stalls on the exhibit. Ms. Oster explained that the west side parking spaces would be used primarily by the employees of the retail center.

Commissioner Zent asked if the building already exists. Ms. Oster explained that it does, and this application is solely to add a drive-through to the building.

Chair Schwartz opened the public hearing.

Dale Gossett, the applicant, explained that the parking on the west side is exclusively for staff parking. The business has existed for a few years but wants to now add a drive-through.

Commissioner Zent asked how many employees would be present at the same time. Mr. Gosset stated he thinks it will be four or five employees.

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

MOTION: Commissioner Schell made a motion to approve the special use permit to allow a drive-through for a coffee shop on Lots 1-2, Block 1, Sonnet Heights Subdivision Fifth Replat. Commissioner Zent seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

CONTINUED PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT AGRICULTURE ZONING DISTRICT

Chair Schwartz called for the continued public hearing on a zoning ordinance text amendment to revise Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

Ms. Wollmuth provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed zoning ordinance text amendment would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth reminded the commission that during the April 24, 2024, public hearing on this request, representatives of Apple Creek Farms, the Tourism Division of the Department of commerce, and several citizens spoke during the public hearing. She noted that concerns were raised by some that the proposed ordinance limited opportunities for agriculture recreation in particular that certain events, such as pumpkin patches, corn mazes and u-pick produce should not be restricted to the major agriculture recreation uses.

Ms. Wollmuth stated that after the April 24, 2024, public hearing and at the direction of the Planning and Zoning Commission, Planning staff, a representative of Apple Creek Farms,

and representatives of the Tourism Division met on May 3, 2024, to modify the ordinance to address concerns made during the public hearing.

During this meeting it was decided to revise the definitions of both major agriculture recreation and minor agriculture recreation to provide additional agriculture recreation opportunities.

Ms. Wollmuth stated that as proposed Minor agriculture recreation includes uses that are smaller in scale and intensity with a limit of no more than 75 people on site at any one time. This limit was decided during the meeting with Apple Creek Farms and the Tourism Division of the Commerce Department.

Minor agriculture recreation uses would be permitted by right for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres. The urban service area boundary is an official line, established by the City Commission within the City’s zoning and subdivision jurisdiction that distinguishes between future urban and rural areas. City growth and municipal infrastructure expansions within this area could be expected within 10-15 years. Areas outside this boundary are not expected to see urban growth for a number of years.

She added that Major agriculture recreation includes uses that are larger in scale and intensity, include commercial event type uses and would be permitted via a special use permit based on certain criteria. Additional criteria for approval of a major agriculture recreation use include that attendance is limited to 250 people at any one time, maximum number of events is limited to 30 days per calendar year, mitigation of noise and light impacts to adjacent properties, additional setback requirements, and requirements to meet applicable life safety - building and fire codes.

Ms. Wollmuth added that the zoning ordinance describes the agriculture zoning district as a district in which the predominate use of land is for general agriculture uses. It further notes that the intent of the agriculture zoning district is to encourage the continued use of land for agriculture uses and to prohibit scattered commercial and industrial use of land. Agriculture recreation uses would not limit or restrict agriculture production or farming on properties.

Ms. Wollmuth went on to explain that the zoning ordinance did not include a definition of agriculture and staff added the definitions. Agriculture is the science or practice of cultivating the soil, producing crop and raising livestock. She also explained that as proposed Private riding arenas would also be approved by special use for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres.

Criteria for approval include that the arena is ancillary to and in conjunction with a single-family dwelling and that there will be no sales, shows, competitions, training clinics, or similar events within or on the premise. Similar to the agriculture recreation major, without these criteria, the arena would be more commercial in nature and not appropriate for the agriculture zoning district.

Additional criteria include location, building size limitation of no larger than 22,000 square feet, setback requirements, and requirements to meet applicable life safety – building and fire codes. Additionally, the proposed ordinance also includes modifications to the lot or parcel

size and increase the area of accessory buildings approved by special use permit for properties located in the agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB).

Accessory building size was increased from 7,500 square feet to 8,000 square feet for properties with at least 35 acres that are also located outside the USAB. The size or number of acres was reduced from 80 to 70 acres for properties zoned agriculture and located outside the USAB for a 15,000 square foot accessory building.

Ms. Wollmuth said, based on the findings, staff recommends approval of the zoning ordinance text amendment to revise Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district, as presented.

Commissioner Field asked for the reason for the acreage limitation for accessory buildings. Ms. Wollmuth explained the ordinance currently requires 80 acres and this amendment reduces it to 70 acres.

Ms. Wollmuth showed the urban service area map and explained the boundaries.

Commissioner Bitner made a statement that he does not feel the City should regulate in the extraterritorial area.

Commissioner Schell asked if a property within the urban service area wants a minor or major agriculture use if the amendment would apply. Ms. Wollmuth explained that the amendment only applies to properties outside of the urban service area..

Commissioner Johnson asked for the reason to not include those properties within the urban service area. Ms. Wollmuth explained that the urban service area exists for expected city growth.

Commissioner Wangen asked why riding arenas have to be private and if they could offer riding clinics or classes to the public. Ms. Wollmuth explained that as proposed the riding arenas would be for private use and that if a riding arena was for the public, it would become a commercial use, and the requirements change completely regarding fire and life safety and parking.

Commissioner Field stated he also believes the city should not regulate this area.

Chair Schwartz opened the public hearing.

ReNay Zundel, Apple Creek Farm spoke in support of the amendment. Commissioner Bitner asked her if she is comfortable with the amendment as it is currently written. Ms. Zundel stated her uses are all covered with this amendment as written. Commissioner Field asked if the number of days and number of people was enough for her businesses. Ms. Zundel repeated that she is satisfied with the amendment as written.

Ellen Duffy, Board Treasurer of the North Dakota Local Foods Development Alliance stated she is opposed to the amendment as written because she believes it excludes properties with less area. Commissioner Bitner asked for specific changes she wants to see. Ms. Duffy

stated she disagrees with the acreage of 35 acres and 75 people. She feels a smaller category would be beneficial.

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

Commissioner Bitner voiced concern over excluding Ms. Duffy's business. Ms. Wollmuth explained that Ms. Duffy's business falls under the farming group and is therefore an allowed use in the A – Agriculture zoning district. Ms. Wollmuth then said event type uses, such as weddings, are the reason for the ordinance amendment. Commissioner Bitner asked if any complaints have been received to trigger this ordinance rewrite. Ms. Wollmuth stated staff had been fielding complaints about loud parties or events going late in the evening. Commissioner Bitner indicated he did not believe that to be true. Ms. Wollmuth said the property owners to the north of Apple Creek Farm made the complaint of the loud party. Commissioner Bitner asked if the complaint was filed anonymously. Ms. Wollmuth indicated that she does not have access to complaint information at the moment. Commissioner Bitner stated that he would like to see the complaint and went on to state that he lives across the street from this request and that the property owners to the north of Apple Creek Farm had a loud dog and loud wind chimes that he can hear from his property. Commissioner Field stated he could not hear any weddings at Apple Creek Farm from his home which is to the south.

Commissioner Bitner asked why an acreage limitation of 35 acres is included in the ordinance. Ms. Wollmuth explained the ordinance provides a level of expectations for both applicants and adjacent landowners. Commissioner Bitner asked Ms. Wollmuth if she felt comfortable making rules for people she does not represent. Community Development Director Ben Ehreth asked commissioners to please be respectful of staff as they work hard to balance between competing interests. Commissioner Bitner asked Mr. Ehreth what business he has regulating property outside of city limits. Mr. Ehreth explained that state law allows the City to have the ETA and set regulations.

Commissioner Sivak asked if he, in the urban service area, would be allowed to have a graduation party. Ms. Wollmuth explained that a graduation party for a family member would be allowed and not considered a commercial-type use.

MOTION: Commissioner Zent made a motion to approve the zoning ordinance text amendment to revise Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district. Commissioner Schell seconded the motion.

Commissioner Schell asked if there was a suggestion for a more appropriate acreage to include small farms. Commissioner Bitner suggested 2 acres and asked if there is a problem with that. Commissioner Schell explained that having a large event on 2 acres would more greatly affect adjacent property owners and therein lies the challenge staff has faced. Commissioner Field spoke about the Minnesota State Fair and how it handles parking. Commissioner Bitner suggested removing the acreage requirement for minor agriculture recreation uses and only including the number of people to limit. Commissioner Field asked for the acreage of the civic center. Commissioner Johnson explained that this ordinance is regarding A – Agriculture zoning district. Commissioner Wangen stated he supports lowering the acreage.

The motion failed with Commissioners Bitner, Field, Johnson, Lukens, Schell, Sivak, Wangen voting against the motion. Commissioners Schwartz and Zent voted in favor of the motion.

MOTION: Commissioner Bitner made a motion to approve the zoning ordinance text amendment with the revision to eliminate the acreage in the minor agriculture recreation use. . Commissioner Field seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

OTHER BUSINESS

Delay of Major Street Plan and Future Land Use Plan Amendments

Mr. Nairn explained that the Planning and Zoning Commission had recommended approval of a Major Street Plan Amendment and Future Land Use Plan amended northwest of Bismarck. After a landowner contacted staff, staff have decided to delay this item. Any changes would return to the Planning and Zoning Commission for another review.

Update on Home Occupation Zoning Ordinance Text Amendment.

Mr. Nairn explained that staff is working on the amendment in response to public comment received on the May 15, 2024, special meeting. Commissioner Bitner asked if notes and minutes were taken at the special meeting. He said the County has an Owl system to record meetings if Dakota Media Access is not available for a meeting, as they were not for the special meeting. Commissioner Bittner also indicated that the special meeting may have violated open records laws because the front door of the building was locked. Mr. Nairn explained that the meeting met all legal notice requirements for a public meeting, and that the front door becoming locked was a system error and that the door was propped open to let people in as soon as staff became aware of the locked door. Commissioner Johnson explained the need for this ordinance text amendment and stated he is encouraged by the changes made. He provided a series of suggestions to staff based on what he had heard at the meeting. Mr. Nairn thanked Mr. Johnson for the comments and said a new draft will be presented for a public hearing at the next regular meeting.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 9:00 p.m. to meet again on June 26, 2024.

Respectfully submitted,

Sarah Fricke
Recording Secretary

Mike Schwartz
Chair

BISMARCK PLANNING & ZONING COMMISSION

SPECIAL MEETING MINUTES

May 15, 2024

The Bismarck Planning & Zoning Commission met on May 15, 2024, 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. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner, Robert Field, Cole Johnson, Amber Larson, Dan Lukens, Mike Schmitz, Mike Schwartz, Sheldon Sivak, Trent Wangen, and Paul Zent.

Staff members present were Brady Blaskowski – Building Official, Janelle Combs – City Attorney, Ben Ehreth – Community Development Director, Sarah Fricke – Senior Administrative Assistant, and Daniel Nairn – Planning Manager.

Chair Schwartz called the meeting to order.

Daniel Nairn provided an overview of the draft ordinance amendment along with an explanation that more people are working from home, requiring the need for the amendment. Mr. Nairn then explained the current ordinance regulations.

The following individuals addressed the Planning and Zoning Commission during the public hearing:

Tyson Austin – Landscaping business – Part of stakeholder group

The main base of his business is located at a shop in an industrial zoning district. He brings his equipment home each day to store at his residence for security reasons. He explained that the ordinance, as written, would cause him hardship by creating a need for additional storage space in a commercial area. He feels the ordinance will force small business out of the community. Mr. Austin agrees that rules are needed but disagrees with only allowing 3.5% of the property for outdoor business storage. He also disagrees with the limited number of employees and stated he will not follow that rule, if passed.

Commissioner Schmitz stated he believes there is a misinterpretation of the rule of the number of allowed employees. Mr. Nairn explained that the maximum number of employees refers to onsite employees only, not for the entire business.

Commissioner Field questioned the difference between farm equipment and commercial equipment.

Jeff White – Realtor

Mr. White questioned the cost of a special use permit. Mr. Nairn stated that the cost of a special use permit is a one-time \$700 and, once approved, stays with the property. Mr. White then questioned whether a working family member that does not live at the property would be counted as an employee. Mr. Nairn stated they would be. He then asked how the ordinance will be enforced. Ben Ehreth explained that enforcement is based on complaints from the public. Mr. White then questioned the language in the ordinance "...no outward visual evidence..." Mr. Nairn explained the intention is to keep a residential appearance of homes in neighborhoods.

Mr. White questioned how the City would differentiate between a party at a home and a home occupation. He closed with asking the commissioners to ask staff to rewrite the ordinance.

Commissioner Field asked Mr. White what an ordinance that does not allow businesses to use a large building would do for the resale value of a home. Mr. White answered that generally, this would decrease a home's value.

Jerry Christianson – Retired Industrial Arts teacher

Mr. Christianson began by explaining the process of starting a business, in a garage and incurring expenses from permits and inspections. He does not want to shut down the entrepreneurial spirit of small business owners. He then asked how 25% was determined for business use. Commissioner Schmitz clarified that the ordinance amendment loosens the current ordinance and explained that balance is difficult and that is what city staff has been trying to do. Commissioner Bitner blamed the City for lack of enforcement of the current ordinance and stated he believes this amendment is overreach. Commissioner Bitner said he concerned with costs.

Eric Kilzer

Mr. Kilzer spoke of requesting a building permit for an accessory building and questioned why he was asked if he would be running a business out of that building. Mr. Nairn explained that this amendment would make operating a business in an accessory buildings allowable, and this is currently not allowed by the ordinance.

Lucas Kroll

Mr. Kroll asked why Section 1B of the ordinance amendment was struck out. He then asked how many businesses in the same home count toward the 25% maximum. Mr. Nairn explained that multiple businesses are allowed in ordinance amendment as currently written and the 25% maximum would apply to all of them together.

It was noted that the outside doors to the building had become locked. Staff noted that this was inadvertent and reopened the doors.

Toby Zabel and Eric Zabel

Toby explained that he is starting a business while living in his parent's home where his father also runs a business. His father, Eric, questioned why a business use for trailers and equipment needs to be more restrictive than personal use for similar items. Mr. Nairn explained that that the 20-foot maximum trailer length applied to minor uses only, and that that this limitation does not apply to major uses while are allowed in rural zoning districts.

Commissioner Bitner questioned why the meeting was not being televised. Mr. Ehreth explained that Dakota Media Access was not available for this meeting.

Jake Wutzke – business owner – Member of stakeholder group

Mr. Wutzke asked staff why the ordinance was being amended. Mr. Ehreth stated that a resident made a complaint to a City Commissioner and the City Commission then directed staff to amend the ordinance. Mr. Wutzke then stated that special use permits were discussed at stakeholder meetings and questioned the possible requirements for fire suppression and

building code regulations. Mr. Blaskowski explained that regulations such as fire suppression depend on the use of a particular building and building codes apply to all buildings in the City and County. Mr. Wutzke stated he wants to protect small businesses; he understands the need for an amendment to the current ordinance but doesn't agree with the current version.

Mr. Ehreth stated that enforcement of the ordinance has been suspended until an amendment has been approved.

Mr. Wutzke told the commission that he had not received any complaints from his neighbors, but two from competing companies. He worries that if enforcement is driven by complaints, it will cause problems.

Commissioner Wangen asked Mr. Blaskowski what the standards are for accessory buildings. Mr. Blaskowski responded that through the special use permit process, the Bismarck Fire Department and Building Inspections Division would review along with County Fire in order to decide what is necessary for individual buildings.

Tim Klein – ETA Resident

Mr. Klein stated he supports young entrepreneurs and stated there are two businesses neighboring his home and has no issues with them or their equipment but understands there is a possibility of it becoming too much.

Mike Knodel – Small construction business

Mr. Knodel stated he has a hobby that he does within a shop on his property. He tried to expand but was told his lot coverage is at maximum. His property's history includes several businesses and the neighbors have not had issues.

Josh Stevens – Christmas tree business

Mr. Stevens uses his garage for his business and made a statement that he prefers to help other local businesses and does not believe the ordinance is helping anyone.

Coty Seigel questioned whether the commissioners had taken oaths to sit on the commission and encouraged them to listen to the public. She suggested they were violating their oaths to the US Constitution.

Andrew Meldahl – Home Builders Association

Mr. Meldahl spoke on behalf of the Bismarck-Mandan Homebuilders Association that includes over 300 businesses and encouraged the commission not to implement the ordinance amendment and stated that neighbors should not be asked for input.

Janell Cole – ETA resident

Ms. Cole stated that she works from her home for the federal government and asked if that space would be counted toward the maximum allowable amount. She asked whether the current ordinance will be enforced if this amendment is denied.

Caitlyn Stevens

Ms. Stevens said she cannot afford to rent a separate space for her business and believes the amendment stifles small businesses.

Commissioner Johnson requested clarification on language in the ordinance “allowed by right...” Mr. Nairn explained that it means that no permit is required.

Mr. Ehreth then explained that as the ordinance is currently written, working from home for a company is counted toward the maximum space allowed as a home occupation.

Mike Knodel stated that many old laws are ignored and questioned who will benefit from this rewrite. Mr. Nairn stated that most North Dakota cities have similar rules regarding home occupations to protect neighborhoods from becoming commercial and industrial areas. He also mentioned that Burleigh County does not allow any outside employees for home-based businesses. Home occupation laws are common, and Bismarck is initiating this amendment to find the right balance.

Debby Grueneich – ETA Resident

Ms. Grueneich asked the commissioners to remember the residents that aren't business owners. She voiced her concern for respect and integrity of residential neighborhoods.

Eric Zabel returned to the podium to ask if a covenant could be written for a neighborhood after development if the neighbors agreed. Commissioner Bitner stated the government does not enforce covenants.

Rudy Peltz – ETA Resident

Mr. Peltz stated he doesn't believe one complaint to the city should trigger a business being shut down.

Ms. Grueneich returned to mention that her property and her neighbor's property is expensive, and they should not be forced to live in a commercial area. She asked the commission to not lose sight of the fact that these areas are zoned residential.

Emory Mattson – City resident

Mr. Mattson stated he believes the amendment is too restrictive and small businesses will not be able to start or grow.

Jeff Goetz (not on the log) stated he received a text message from a commissioner that they intended to pass the amendment regardless of the resident's objections. Commissioner Schmitz explained again that the City Commission requested the amendment and that residents would be represented at public hearings.

Kolton Reis – ETA resident

Mr. Reis asked if a special use permit for a property would be valid if the business type changes. Mr. Nairn explained that an approved special use permit is valid for the use in the initial request, including if the property is transferred to a new owner. Mr. Reis told the commission that the amendment needs more clarification in the revisions to find more common ground.

Eric Kilzer returned to suggest the city or state should look into finding undocumented businesses and not punish registered businesses. He said he cannot afford a commercial property. Mr. Kilzer then asked if his business would be shut down if the amendment passes.

Alex Wutzke – ETA Resident

Ms. Wutzke stated her main concern with the amendment draft is enforceability. She questioned how the city will find out if a business inside a home is in violation. Ms. Wutzke stated that as long as the business is hidden from the street view with tree rows, privacy fencing, etc., and the neighbors do not have issues with it, it should be allowed.

Dan Emineth – Plumbing business owner

Mr. Emineth explained that he does the type of plumbing work that large plumbing businesses do not do. He is a small business and cannot afford a commercial property. He occasionally has employees and then questioned if the rules on signs applies to vehicle decals. Mr. Nairn explained vehicle decals are not considered signs, and that this is clarified in a different section of the ordinance.

Audrey Cole – ND State employee, works from home

Ms. Cole's husband runs a small business out of their home, and she is considering starting another. She disapproves of the amendment as written because she wouldn't be allowed to start a new business in her home.

Mike Connelly – City Commissioner

Mr. Connelly made a statement to encourage residents to contact their commissioners to express their wishes.

Dale Lang – business owner

Mr. Lang stated he recently had to purchase a \$300,000 shop condo after a neighbor complained about his home-based business. He has 8-10 employees.

Dan Zabel – LLC owner

Mr. Zabel stated he thinks the amendment needs more work to correct residents that are running businesses from their homes without considering their neighbors while still allowing small businesses to exist in neighborhoods.

Scott Vetter – ETA resident

Mr. Vetter said he lives on 50 acres and runs a business that is a quarter of a mile away from the nearest neighbor.

An unknown speaker that did not sign the log said he owns a snow removal business that helps his neighborhood by allowing school buses, ambulances, emergency vehicles, etc to get to homes. He stores sand and salt on his lot.

Dave Meyer – Business owner

Mr. Meyer stated he parks his work equipment neatly and keeps his property clean. He asked the commission to protect his rights and protect future small businesses.

There being no further public comments, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 8:05 p.m.

Respectfully submitted,

Sarah Fricke
Recording Secretary

Mike Schwartz
Chair

PERMIT ACTIVITY REPORT - MTD
DATE SELECTION 5/2024

*****City*****

*****ETA*****

| Census Code | 5/2024 | | 5/2023 | | 5/2024 | | 5/2023 | |
|-----------------------------------|------------|------------------------|------------|------------------------|-----------|-----------------------|-----------|-----------------------|
| | Permits | Valuations | Permits | Valuations | Permits | Valuations | Permits | Valuations |
| SINGLE FAMILY DETACHED | 20 | \$7,597,967.25 | 14 | \$5,753,715.63 | 3 | \$1,732,186.50 | 3 | \$1,169,204.48 |
| ROWHOUSE (2) 1-HR FIRE SEPARATION | 2 | \$521,576.00 | 8 | \$1,942,696.45 | 0 | \$0.00 | 6 | \$1,858,782.41 |
| MANUFACTURED HOMES | 2 | \$0.00 | 2 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| RESIDENTIAL ADDITION | 3 | \$137,353.90 | 2 | \$72,590.10 | 2 | \$92,302.00 | 0 | \$0.00 |
| DETACHED GARAGE | 5 | \$152,913.00 | 5 | \$101,600.00 | 4 | \$170,954.50 | 6 | \$335,000.00 |
| DECKS\PORCHES & COVERED PORCHES | 18 | \$133,888.75 | 31 | \$122,379.25 | 2 | \$4,725.00 | 3 | \$11,451.00 |
| SWIMMING POOLS | 0 | \$0.00 | 0 | \$0.00 | 2 | \$265,000.00 | 4 | \$363,400.00 |
| RESIDENTIAL ALTERATION/OTHER | 2 | \$1,114,236.02 | 5 | \$58,323.92 | 1 | \$7,000.00 | 2 | \$37,807.20 |
| HOME OCCUPATION | 1 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| STORAGE SHED | 3 | \$8,640.00 | 5 | \$13,350.00 | 0 | \$0.00 | 1 | \$2,400.00 |
| BASEMENT FINISH | 6 | \$234,783.50 | 7 | \$185,217.00 | 0 | \$0.00 | 0 | \$0.00 |
| RESIDENTIAL | 2 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL | 0 | \$0.00 | 1 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| FIREWORKS SALES | 0 | \$0.00 | 0 | \$0.00 | 5 | \$0.00 | 4 | \$0.00 |
| NEW SIGN PERMITS | 6 | \$56,627.00 | 6 | \$60,243.00 | 0 | \$0.00 | 0 | \$0.00 |
| SIGN ALTERATION | 1 | \$400.00 | 1 | \$13,811.00 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL NEW CONSTRUCTION | 26 | \$2,451,916.00 | 10 | \$40,788,900.00 | 2 | \$4,041,292.00 | 0 | \$0.00 |
| COMMERCIAL ADDITION | 6 | \$14,837,393.00 | 1 | \$499,890.00 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL ALTERATION | 8 | \$754,320.00 | 12 | \$8,744,773.00 | 0 | \$0.00 | 1 | \$94,000.00 |
| Total | 111 | \$28,002,014.42 | 110 | \$58,357,489.35 | 21 | \$6,313,460.00 | 30 | \$3,872,045.09 |

PERMIT ACTIVITY REPORT - MTD
DATE SELECTION 5/2024

*****City*****

*****ETA*****

| Trade Permit Type | 5/2024 | | 5/2023 | | 5/2024 | | 5/2023 | |
|---------------------|------------|-----------------------|------------|-----------------------|-----------|---------------------|-----------|---------------------|
| | Permits | Valuations | Permits | Valuations | Permits | Valuations | Permits | Valuations |
| BUILDING ELECTRIC | 94 | \$0.00 | 84 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| BUILDING MECHANICAL | 89 | \$840,399.82 | 152 | \$3,534,646.34 | 1 | \$5,000.00 | 3 | \$8,450.00 |
| BUILDING PLUMBING | 37 | \$546,510.00 | 48 | \$2,869,630.14 | 13 | \$201,145.00 | 9 | \$130,638.00 |
| BUILDING SEPTIC | 1 | \$0.00 | 0 | \$0.00 | 2 | \$8,000.00 | 1 | \$0.00 |
| Total | 221 | \$1,386,909.82 | 284 | \$6,404,276.48 | 16 | \$214,145.00 | 13 | \$139,088.00 |

PERMIT ACTIVITY REPORT - MTD
DATE SELECTION 5/2024

| | *****City***** | | *****ETA***** | |
|-----------------------------------|----------------|-----------|---------------|----------|
| | 5/2024 | 5/2023 | 5/2024 | 5/2023 |
| Living Units | Units | Units | Units | Units |
| MANUFACTURED HOMES | 2 | 2 | 0 | 0 |
| BASEMENT FINISH | 0 | 0 | 0 | 0 |
| DECKS\PORCHES & COVERED PORCHES | 0 | 0 | 0 | 0 |
| DETACHED GARAGE | 0 | 0 | 0 | 0 |
| RESIDENTIAL ADDITION | 0 | 0 | 0 | 0 |
| RESIDENTIAL ALTERATION/OTHER | 0 | 0 | 0 | 0 |
| ROWHOUSE (2) 1-HR FIRE SEPARATION | 2 | 8 | 0 | 6 |
| SINGLE FAMILY DETACHED | 19 | 13 | 3 | 3 |
| SWIMMING POOLS | 0 | 0 | 0 | 0 |
| Total | 23 | 23 | 3 | 9 |

**PERMIT ACTIVITY REPORT - YTD
DATE SELECTION 5/2024**

*****City*****

*****ETA*****

| Census Code | 5/2024 | | 5/2023 | | 5/2024 | | 5/2023 | |
|-----------------------------------|------------|------------------------|------------|-------------------------|-----------|------------------------|-----------|-----------------------|
| | Permits | Valuations | Permits | Valuations | Permits | Valuations | Permits | Valuations |
| SINGLE FAMILY DETACHED | 41 | \$16,268,605.30 | 22 | \$8,309,565.74 | 10 | \$4,842,127.75 | 9 | \$3,466,833.94 |
| ROWHOUSE (2) 1-HR FIRE SEPARATION | 32 | \$5,816,413.00 | 26 | \$6,094,677.37 | 0 | \$0.00 | 8 | \$2,395,976.11 |
| MULTI FAMILY RESIDENTIAL | 1 | \$241,700.00 | 0 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| MANUFACTURED HOMES | 6 | \$0.00 | 6 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| RESIDENTIAL ADDITION | 7 | \$280,069.30 | 3 | \$105,386.10 | 4 | \$171,109.00 | 1 | \$88,698.00 |
| DETACHED GARAGE | 7 | \$190,813.00 | 7 | \$135,200.00 | 6 | \$208,554.50 | 8 | \$399,200.00 |
| DECKS\PORCHES & COVERED PORCHES | 38 | \$225,352.15 | 42 | \$162,276.00 | 3 | \$11,529.00 | 4 | \$14,475.00 |
| SWIMMING POOLS | 3 | \$375,000.00 | 1 | \$85,000.00 | 2 | \$265,000.00 | 4 | \$363,400.00 |
| RESIDENTIAL ALTERATION/OTHER | 26 | \$836,033.60 | 11 | \$208,623.92 | 5 | \$1,166,000.00 | 6 | \$621,388.36 |
| HOME OCCUPATION | 4 | \$0.00 | 2 | \$0.00 | 1 | \$0.00 | 0 | \$0.00 |
| STORAGE SHED | 5 | \$13,680.00 | 6 | \$15,750.00 | 1 | \$2,400.00 | 2 | \$5,400.00 |
| BASEMENT FINISH | 24 | \$655,425.75 | 28 | \$600,425.00 | 4 | \$117,906.00 | 3 | \$85,677.50 |
| RESIDENTIAL | 3 | \$0.00 | 1 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL | 2 | \$0.00 | 5 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| FIREWORKS SALES | 0 | \$0.00 | 0 | \$0.00 | 5 | \$0.00 | 4 | \$0.00 |
| NURSERY STOCK SALES | 0 | \$0.00 | 4 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| MISC TEMPORARY STRUCTURES | 4 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 | 0 | \$0.00 |
| NEW SIGN PERMITS | 36 | \$632,723.61 | 20 | \$504,216.62 | 1 | \$300.00 | 0 | \$0.00 |
| SIGN ALTERATION | 15 | \$105,477.13 | 11 | \$87,690.27 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL NEW CONSTRUCTION | 46 | \$33,785,151.00 | 44 | \$67,266,653.00 | 10 | \$8,961,292.00 | 0 | \$0.00 |
| COMMERCIAL ADDITION | 7 | \$16,889,111.00 | 2 | \$1,499,890.00 | 0 | \$0.00 | 0 | \$0.00 |
| COMMERCIAL ALTERATION | 42 | \$14,129,033.02 | 47 | \$21,645,278.00 | 4 | \$125,030.00 | 4 | \$476,500.00 |
| Total | 349 | \$90,444,587.86 | 288 | \$106,720,632.02 | 56 | \$15,871,248.25 | 53 | \$7,917,548.91 |

**PERMIT ACTIVITY REPORT - YTD
DATE SELECTION 5/2024**

*****City*****

*****ETA*****

| Permit Type | 5/2024 | | 5/2023 | | 5/2024 | | 5/2023 | |
|---------------------|------------|------------------------|------------|------------------------|-----------|---------------------|------------|-----------------------|
| | Permits | Valuations | Permits | Valuations | Permits | Valuations | Permits | Valuations |
| BUILDING ELECTRIC | 346 | \$20,000.00 | 305 | \$0.00 | 1 | \$0.00 | 2 | \$0.00 |
| BUILDING MECHANICAL | 514 | \$7,487,047.81 | 568 | \$10,941,414.18 | 64 | \$497,986.53 | 88 | \$1,004,170.25 |
| BUILDING PLUMBING | 111 | \$5,386,329.00 | 106 | \$4,415,758.67 | 16 | \$225,145.00 | 20 | \$287,765.14 |
| BUILDING SEPTIC | 1 | \$0.00 | 0 | \$0.00 | 3 | \$8,000.00 | 3 | \$10,000.00 |
| Total | 972 | \$12,893,376.81 | 979 | \$15,357,172.85 | 84 | \$731,131.53 | 113 | \$1,301,935.39 |

PERMIT ACTIVITY REPORT - YTD
DATE SELECTION 5/2024

*****City*****

*****ETA*****

| Living Units | 5/2024 | 5/2023 | 5/2024 | 5/2023 |
|-----------------------------------|------------|-----------|----------|-----------|
| | Units | Units | Units | Units |
| DECKS\PORCHES & COVERED PORCHES | 0 | 0 | 0 | 0 |
| MULTI FAMILY RESIDENTIAL | 0 | 0 | 0 | 0 |
| MANUFACTURED HOMES | 5 | 6 | 0 | 0 |
| BASEMENT FINISH | 0 | 0 | 0 | 0 |
| DECKS\PORCHES & COVERED PORCHES | 0 | 0 | 0 | 0 |
| DETACHED GARAGE | 0 | 0 | 0 | 0 |
| RESIDENTIAL ADDITION | 0 | 0 | 0 | 0 |
| RESIDENTIAL ALTERATION/OTHER | 0 | 0 | 0 | 0 |
| ROWHOUSE (2) 1-HR FIRE SEPARATION | 92 | 50 | 0 | 6 |
| SINGLE FAMILY DETACHED | 39 | 21 | 9 | 9 |
| SWIMMING POOLS | 0 | 0 | 0 | 0 |
| Total | 136 | 77 | 9 | 15 |