

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