

**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)**

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 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, Lot 84, Block 1 and Lot 40, Block 3 are being replatted as Misty Waters First Replat, which will replace multi-family residential uses within a portion of the development with single-family uses.

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 1-8483, Block 1; Lots 1, Block 2; Lots 1-4039, Block 3; and Lot 1, Block 4; Misty Waters and Lots 1-3, Block 1 and Lots 1-3, Block 2, Misty Waters First Replat

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

1. Uses Permitted. Uses permitted include a maximum of 145 129 residential units (115 121 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 (~~115~~ 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; 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 the northerly 573.16 feet of the easterly 177.91 feet of Lot 2 and all of Lots 82-8483, Block 1, and Lots 38-4039, Block 3 (~~three~~ 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 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 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, 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. 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. *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. *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 for the marina parking facilities on Lot 1, Block 1 and the commercial uses on Lot 2 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 may be modified by the City Forester and/or City Planner 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.

9. *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.

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

11. *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.

12. *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.