

**INVER GROVE HEIGHTS
PLANNING COMMISSION AGENDA**

**Tuesday, September 15, 2009 – 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue**

1. **CALL TO ORDER**

2. **APPROVAL OF PLANNING COMMISSION MINUTES FOR September 1, 2009**

3. **APPLICANT REQUESTS AND PUBLIC HEARINGS**

3.01 JAMES BROWN – CASE NO. 09-25WAV (Tabled from September 1)

Consider the following requests for property located at 1186 90th Street:

A.) A **Waiver of Plat** to create two parcels from the existing one tax parcel.

Planning Commission Action _____

B.) A **Variance** to allow the lots to be less than the required 2.5 acre minimum.

Planning Commission Action _____

C.) A **Variance** to allow an accessory structure on a lot without a principle structure.

Planning Commission Action _____

3.02 MCDONALD CONSTRUCTION – CASE NO. 09-28C

Consider a **Conditional Use Permit** to allow for 27.5% impervious coverage to construct a single family home, garage, sidewalk and driveway on an R-1C zoned lot.

Planning Commission Action _____

3.03 SHEEHAN/WOODS – CASE NO. 09-27V

Consider a **Variance** from the front yard setback to construct a covered porch addition.

Planning Commission Action _____

3.04 CITY OF INVER GROVE HEIGHTS – CASE NO. 09-29ZA

Consider an Ordinance Amendment to Title 10, Chapter 16 – Nonconformities, relating to the maintenance and repair of nonconforming uses and structures.

Planning Commission Action _____

4. OTHER BUSINESS

5. ADJOURN

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, September 1, 2009 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

Chair Bartholomew called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Tom Bartholomew
Paul Hark
Christine Koch
Damon Roth
Pat Simon
Tony Scales
Mike Schaeffer
Harold Gooch
Dennis Wippermann

Commissioners Absent:

Others Present: Tom Link, Director of Community Development
Allan Hunting, City Planner
Eric Carlson, Director of Parks and Recreation

APPROVAL OF MINUTES

The minutes from the August 18, 2009 meeting were approved as submitted.

JAMES BROWN - CASE NO. 09-25WAV

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a waiver of plat to split one lot into two lots, and a variance to the minimum lot size, for the property located at 1186 – 90th Street East. 7 notices were mailed.

Opening of Public Hearing

Chair Bartholomew advised that the applicant has requested this item be tabled until September 15, 2009.

Motion by Commissioner Simon, second by Commissioner Koch, to table until September 15, 2009 the request for a waiver of plat to split one lot into two lots, and a variance to the minimum lot size.

Motion carried (9/0).

SHINTRE – CASE NO. 09-24V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance for a home occupation to have an entrance that leads outside of the home, for the property located at 6269 Bolland Trail. 5 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the

applicant is requesting a variance from one of the City's home occupation criteria to allow a separate entrance that would lead directly to the assembly area. Mr. Hunting advised that the applicants would like to conduct a home occupation in their basement in which they would assemble prepackaged Indian food. Because the use involves the handling of food, a permit from the Department of Agriculture is required. As part of this permit they are required to have a separate entrance that directly connects the assembly area to outside. Mr. Hunting noted that the applicant will not have customers coming to the home, and the only reason the applicant is requesting a separate entrance is because the State is requiring it. The hardship of the request is that the applicant cannot meet both the State requirements and the City Code; therefore staff recommends approval of the request.

Commissioner Wippermann asked if staff had received comments from any of the neighbors, to which Mr. Hunting replied they had not.

Opening of Public Hearing

Tamera and Manohar Shintre, 6269 Bolland Trail, advised they were available to answer any questions.

Chair Bartholomew asked if the applicants were in agreement with the conditions listed in the report, to which the Shintres replied in the affirmative.

Commissioner Schaeffer questioned why the State would require a separate entrance since this was technically not the handling of food but rather the assembling of prepackaged products.

Ms. Shintre responded that although the food was prepackaged, the Department of Agriculture still required they adhere to the State regulations.

Commissioner Wippermann asked for clarification regarding the separate entrance, to which Mr. Shintre replied the State required that all food be brought in and out through a separate entrance.

Commissioner Wippermann asked if the entire lower level would be dedicated to the business, to which Mr. Shintre replied in the affirmative.

Commissioner Wippermann questioned how the applicants would transport supplies to the lower level as there appeared to be difficult terrain on the sides of the home.

Mr. Shintre replied that the prepackaged items were light and could easily be carried to the rear of the home. He stated he and his wife would pick up the supplies at a grocery store using their personal vehicle, bring them around to the lower level, assemble them into boxes, and drive them to UPS or FedEx for shipment. He stated there were be no business related vehicles coming to the home and the ordering would be done on-line.

Planning Commission Discussion

Commissioner Schaeffer stated he supported the request and appreciated the applicants' efforts to do everything correctly.

Commissioner Gooch stated that since the Department of Agriculture supported the arrangement he had no objections to approving the variance request.

Planning Commission Recommendation

Motion by Commissioner Schaeffer, second by Commissioner Hark, to approve the request for a variance for a home occupation to have an entrance that leads outside of the home for property located at 6269 Bolland Trail, with the conditions listed in the report and the hardship as stated.

Motion carried (9/0). This matter goes to the City Council on September 28, 2009.

CITY OF INVER GROVE HEIGHTS

Reading of Notice

Mr. Hunting advised that no public hearing notice was required for this request.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the Planning Commission is being asked to review the City's proposed purchase of tax forfeit property for compliance with the Comprehensive Plan. The property is located east of Concord Boulevard and just north of 66th Street and abuts, on the north and south, the railroad right-of-way the City is in the process of acquiring for the Rock Island Swing Bridge. Mr. Hunting advised that the property is currently guided for Mixed Use and zoned Agricultural. The property would require a guiding of Park/Institutional to be zoned and utilized for park purposes. He advised that while the property is not properly guided for park purposes, the Planning Commission could still make a positive recommendation to acquire the property and recommend to the City Council to initiate the process for a Comprehensive Plan Amendment and Rezoning of the property. Staff believes that park usage would be consistent with the visions that the City has for this area, and recommends approval of the acquisition for park purposes with the condition listed in the report.

Eric Carlson, Director of Parks and Recreation, gave a brief overview of the request and the plans for the Concord and 66th Street area. He explained that the parcels being discussed tonight were located on either side of the Rock Island Swing Bridge and were in close proximity to Heritage Village Park. He advised that the City's plans were to reuse the Dakota County side of the Rock Island Swing Bridge as a recreational pier. The City would like to incorporate the tax forfeit parcels being discussed tonight into a master plan for the Rock Island Swing Bridge area. Mr. Carlson advised that a subcommittee of the Park and Recreation Commission is working on developing a master plan for this area (possibly incorporating a picnic area, trails, boat launch, etc.), including having an adequate parking area for people accessing the bridge and other future amenities. Mr. Carlson advised that the total project cost would be approximately 2.4 million dollars. At this time, the City is approximately \$871,000 short of the money that was either granted to the City or approved by the City Council.

Chair Bartholomew asked if any soil remediation would be needed for this property.

Mr. Carlson stated that although it had not been investigated, he did not anticipate any contamination issues on the property.

Chair Bartholomew asked if the City was prohibited from owning property in the floodplain, to which Mr. Carlson replied that he was not aware of anything precluding them from the acquisition.

Chair Bartholomew asked if the parking lot to the west of the subject site encroached into the parcel in question, to which Mr. Carlson replied in the affirmative. Mr. Carlson added that something would need to be worked out between the City Attorney and the adjacent property owner if the acquisition were to go forward.

Commissioner Wippermann asked what the cost would be for acquiring the properties being considered this evening, to which Mr. Carlson replied the only cost would be filing and recording fees.

Commissioner Gooch asked if the property east of the southernmost parcel being discussed was a swamp area or solid ground.

Mr. Carlson replied it was solid ground that sometimes took on back water during high water levels.

Commissioner Roth asked why the first two pier spans were dropped, to which Mr. Carlson replied they were structurally insufficient.

Commissioner Wippermann asked if the City was obligated to initiate a development on the property since it was acquired through tax forfeiture.

Mr. Carlson replied he was not aware of it being an issue since the intention was to turn the area into a park and attach it to the development of the Rock Island Swing Bridge.

Commissioner Hark asked if there was an issue with timing.

Mr. Carlson replied in the affirmative, stating the City needed to have several things in place by November 13, 2009 or they would stand a chance of losing the grant.

Opening of Public Hearing

There was no public testimony.

Planning Commission Discussion

Chair Bartholomew stated he was pleased that the City was planning to address the encroachment issue, and he supported the request.

Planning Commission Recommendation

Motion by Commissioner Simon, second by Commissioners Wippermann and Roth, to recommend approval of the acquisition of the tax forfeit property adjacent to the Rock Island Swing Bridge being in compliance with the Comprehensive Plan with the condition that the City Council initiate the process to change the land use designation and zoning of the property to Public/Institutional.

Motion carried (9/0). This matter goes to the City Council on September 14, 2009.

ADJOURNMENT

Chair Bartholomew adjourned the meeting at 7:30 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary

P L A N N I N G R E P O R T
CITY OF INVER GROVE HEIGHTS

REPORT DATE: September 10, 2009

CASE NO: 09-25WAV

APPLICANT: James Brown

PROPERTY OWNER: James Brown

REQUEST: Waiver of Plat and Variances

HEARING DATE: September 15, 2009

LOCATION: 1186 E. 90th Street

COMPREHENSIVE PLAN: RDR, Rural Density Residential

ZONING: E-1, Estate Residential

REVIEWING DIVISIONS: Planning

PREPARED BY: Allan Hunting
City Planner

BACKGROUND

The applicant is proposing to re-subdivide his land into two parcels based on the original legal descriptions when the property was platted sometime in the 1950's. The proposed parcels would both be less than the E-1 zoning minimum lot size of 2.5 acres. The northern lot would be 1.68 acres and the southern lot would be 1.95 acres. There is also an existing accessory structure that would end up being on the northerly lot without a principle structure. The applicant's house would then be located on the southern parcel. The applicant has no plans to sell or develop the proposed lot. The basis of the request is to allow the two legally described parcels to exist with their own tax parcel numbers.

The City recognizes the County tax parcel number or "PID" as the "official" lot size and boundary for zoning purposes. The property was divided into a number of lots per the survey dated 1955 that was submitted by the applicant. At some point in time, the subject lots, parcels #5 and #6 were combined into one tax parcel. Parcels #5 and #6 as described by legal description are no longer individual lots of record but exist as one single lot per the boundary of the tax parcel number. In order to re-create the originally described parcels, a variance is necessary to create lots less than the required 2.5 acre minimum lot size. There are no "grandfathering" clauses in this type of situation to allow the tax parcel to be divided back to the original boundaries without City Council approval.

The specific requests include the following:

1. A **Waiver of Plat** to create two parcels from the existing one tax parcel.
2. A **Variance** to allow the lots to be less than the required 2.5 acre minimum.
3. A **Variance** to allow an accessory structure on a lot without a principle structure.

EVALUATION OF THE REQUEST

The property is surrounded by residential lots of varying sizes. All surrounding parcels are guided RDR and are zoned E-1, Estate Residential.

WAIVER OF PLAT

Lot Size. The waiver of plat consists of dividing a 3.63 acre parcel into two parcels. The submitted survey of the property identifies the parcels in question as Parcels #5 and #6 from a survey dated October 20, 1955. Parcel #5 would be recreated to its original 1.68 acres and the balance into its original Parcel #6 of 1.95 acres. The survey that was done in 1955 shows Parcels #1 - #9 to be between 1.67 and 1.95 acres in size. Some of these parcels remain in their original size and others have been combined into one tax parcel.

Staff looked into the history of why some of the lots have been combined and why some exist as originally divided. During a period in the 1980's, the County had a practice of combining adjacent lots if owned by the same party, into a single tax parcel. A property on the north end of the subdivision was affected by this practice and was re-divided in 1986. This practice however, did not affect the subject lot. In 1976, a previous owner of the subject property went through a variance process to build on the 3.63 acre lot that was zoned A, Agricultural at the time. The lot was substandard in size because it did not meet the 5.0 acre lot size. Council approved a variance to build on the lot but required a rezoning to be processed to E-1 to avoid inconsistency with lot sizes. County maps in the planning file at that time show parcels 5 and 6 as one tax parcel. Therefore, the combination of parcels 5 and 6 predated the County's old practice of combining lots and the lots must have been combined by an owner prior to 1976.

In 1977, the property owner of the lot immediately to the north of this subject property was granted a variance from minimum lot size to build a home on the 1.68 acre lot. The hardship being there was no way of combining two vacant lots to meet minimum lot size.

This past history shows that a previous owner combined the lots and that it was not done by a county action. Past city actions has shown that the Council has made attempts to continue to consolidate the lots in the subdivision so they meet the requirements of the E-1 district, rather than allow smaller lots to continue. In this case, the request to re-divide the parcels would be contrary to the City's efforts to combine the lots so they meet the minimum 2.5 acre minimum lot size.

Access. Access to the proposed lot would be via a private road that connects to 90th Street. There is an existing 60 foot wide access easement for all of the lots, so legal access for the lot currently exists. The private road surface is gravel and is approximately 10-12 feet wide. The length of the

road is approximately 1000 feet long and serves six homes. The Zoning Ordinance has a provision which is based on fire code requirements addressing minimum access widths for private roads and driveways. The code requires driveways or roads serving more than two homes or structures shall have a minimum unobstructed width of 20 feet and a vertical opening width minimum of 13.5 feet. Based on observations by the Fire Marshal and Planning staff, the current road does not comply with these minimums. The existing homes have been built at different times and some regulations may have changed along the way. However, if a new lot is being created, then the road should be brought up to standards, both city and state fire codes. This requirement could be addressed with a condition where the future land owner would be responsible for bringing the driveway into compliance as part of the building permit process. This however, puts the burden on a future landowner that may not be aware or have planned on needing to improve a private driveway beyond their own property line. Staff also looks at this situation as that in order to re-subdivide this parcel, the driveway should be brought into compliance by the applicant or developer when the property is divided and not shift the burden to the next landowner. The property also abuts another private road to the east, but the same issues came up when a landowner applied to divide their property. In that case also, the private road did not meet minimum standards and would have been required to be upgraded as part of the approval to subdivide their land.

A condition of approval could be that the driveway along 90th Street be brought into compliance with city code as part of a building permit and prior to certificate of occupancy. An alternative condition could be that prior to recording the waiver of plat, the applicant or developer shall bring the entire length of the private road into compliance with city code. That way, the lot would meet access requirements up front without defraying these costs to a future landowner.

The driveway to the existing house would end up on the separate lot if the lots are divided. In order to address this situation, the application has two options. Either move the existing driveway so it reconstructed wholly on the southerly parcel (parcel #6), or grant a driveway easement to allow the driveway to remain on the northerly lot (parcel #5). If the easement option is chosen, a legal description would be required to identify the actual location of the driveway and a driveway access easement would be required to be drafted and recorded along with the waiver of plat. The easement and the legal description would be the responsibility of the applicant and would be required to be submitted to the city and reviewed by the City Attorney prior to the waiver of plat being recorded.

Soil Borings. The applicant has provided soil borings for the vacant lot to verify the soils would be suitable for a septic system. The Building Inspections Department has reviewed the soil boring information and notes that the soil types would be suitable for septic systems.

Park Dedication. Park dedication would be required for the new lot. A cash contribution of \$4,011 is payable at the time of the release of the waiver of plat resolution.

VARIANCES

As stated previously, two variances are being requested as part of this application. The first is to allow lots that would be less than the required 2.5 acre minimum lot size in the E-1 District. The other is to allow the exception of having an accessory structure on a lot before a principal structure exists.

The City Code states that the City Council may grant variances in instances where practical difficulties exist or where a hardship would be imposed upon the property owner if the code were strictly enforced. In order to grant the requested variances, the City Code identifies several criteria which are to be considered. The applicant's request is reviewed below against those criteria.

- a. *Special conditions apply to the structure or land in question which are peculiar to such property or immediately adjoining property, and do not apply generally to other land or structures in the district in which said land is located.*

In actuality, no new lot is being created. The overall impact is re-establishing the lots as originally surveyed. However, during the 1970's, the City processed a couple of lot size variances for this particular subject lot and the lot immediately to the north. In both cases the variances were approved with the hardship no additional vacant lots were available for sale that could increase the size of the lot in question. The Council has made attempts to continue to consolidate the lots in this subdivision so they meet the requirements of the E-1 district rather than allow smaller lots to continue. In this case the request would be contrary to the City's efforts to combine the lots so they can meet the required 2.5 acre minimum lot size.

The existing accessory structure is oriented towards the other buildings on the lot and it does not have a driveway. Its use for things not allowed in the Code would appear to be very limited.

- b. *The granting of the application will not be contrary to the intent of the Zoning Code or the Comprehensive Plan.*

The variance from minimum lot size does appear to be contrary to the Zoning Code as the intent is to minimize the impact of substandard size lots and combine where possible. Allowing the property to re-divide would be contrary to this intent.

Allowing the accessory structure on a lot without a principle structure does not appear to have a negative impact on the intent of the ordinance.

The

- c. *The granting of such variance is necessary as a result of a demonstrated undue hardship or difficulty, and will not merely serve as a convenience to the applicant.*

No hardship appears to exist to allow the parcel to be re-divided. The property currently meets minimum lot size and contains a home and accessory structures. There is no burden being placed on the land owner by maintaining the two lots in one tax parcel, the lot meets and is required to meet minimum lot size. Allowing the division would be contrary to the City's efforts to combine the lots in this neighborhood to eliminate the substandard lots.

d. Economic considerations alone do not constitute an undue hardship.

Economic considerations do not appear to be the sole basis for this request.

ALTERNATIVES

The Planning Commission has the following actions available on the following requests:

- A. Approval.** If the Planning Commission finds the application to be acceptable, the following action should be taken:
- Approval of the **Waiver of Plat** allowing Parcels #5 and #6 per the survey dated 10/20/55 as individual tax parcels subject to the following conditions:
 1. Prior to release of and recording the waiver of plat, the applicant shall either move the existing driveway to the house on parcel #6 so it does not encroach onto parcel #5, or a driveway easement shall be required to be recorded allowing the driveway to encroach onto parcel #5. The applicant shall be responsible for providing the driveway easement document including a legal description of the easement area. Said easement document shall be reviewed by the City prior to recording.
 2. Park dedication shall consist of a cash contribution of \$4,011 payable at time of release of the Resolution to the County.
 - Approval of the **Variances** to allow Parcels #5 and #6 to be less than the required 2.5 acre minimum lot size and to allow an accessory structure on a lot prior to a principle structure subject to the following condition:
 1. The accessory structure shall not be used for commercial uses or storage related to a commercial use.
- B. Denial.** If the Planning Commission does not favor the proposed application, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Staff believes allowing the waiver of plat and creating two lots less than 2.5 acres in size would be contrary to past actions taken by the City in this particular area to eliminate or reduce the number of substandard sized lots. A valid hardship does not appear to be present. Staff does not recommend approval of the request.

If the Planning Commission finds the request acceptable, staff has included conditions that would address the main issues that need to be handled. The Planning Commission should however, include a condition regarding the improvements to the existing private road as either a requirement of the developer or the future landowner.

Attachments: Location Map
Waiver of Plat Map
Surrounding Lot Size Map

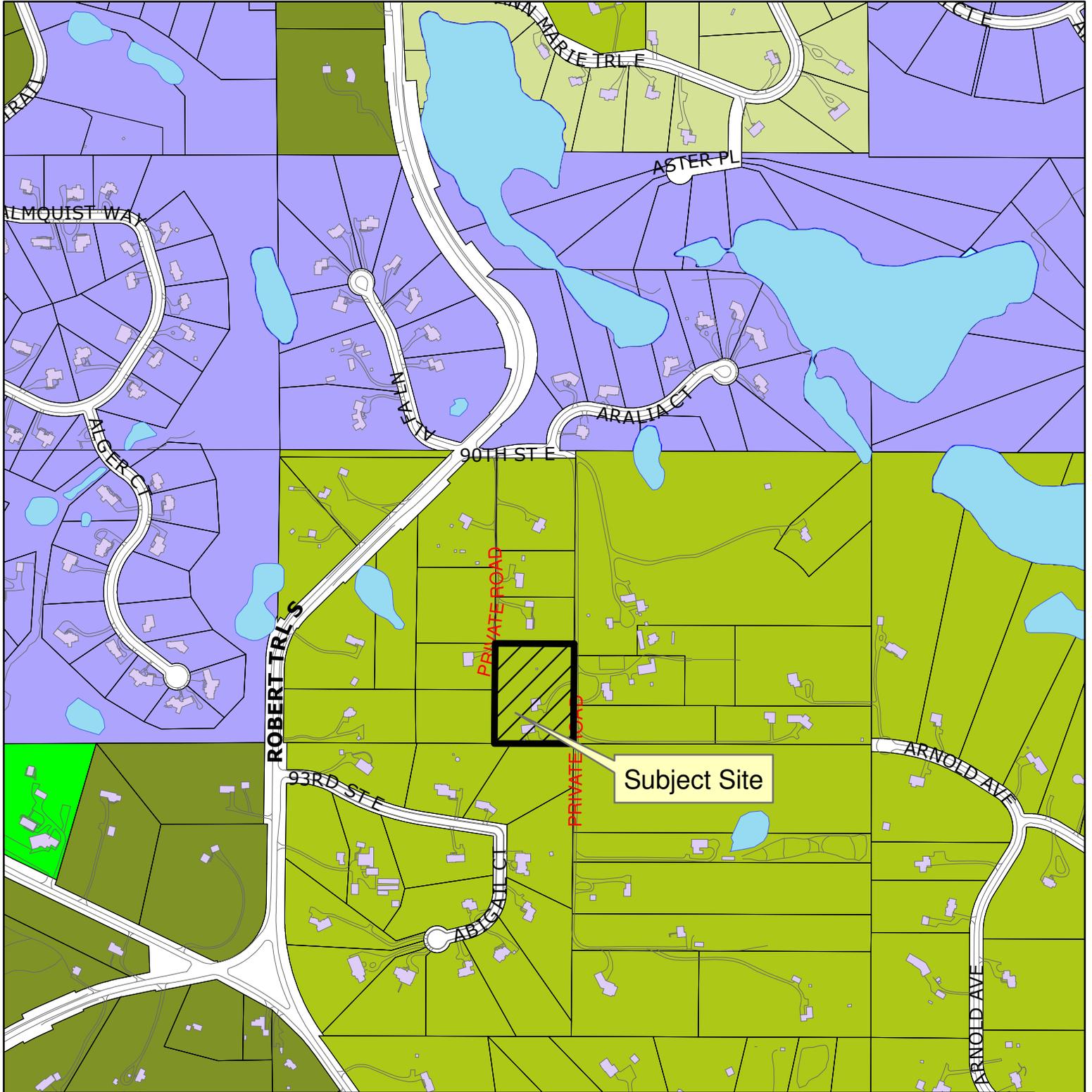


Location Map

Case No. 09-25WAV



NOT TO SCALE



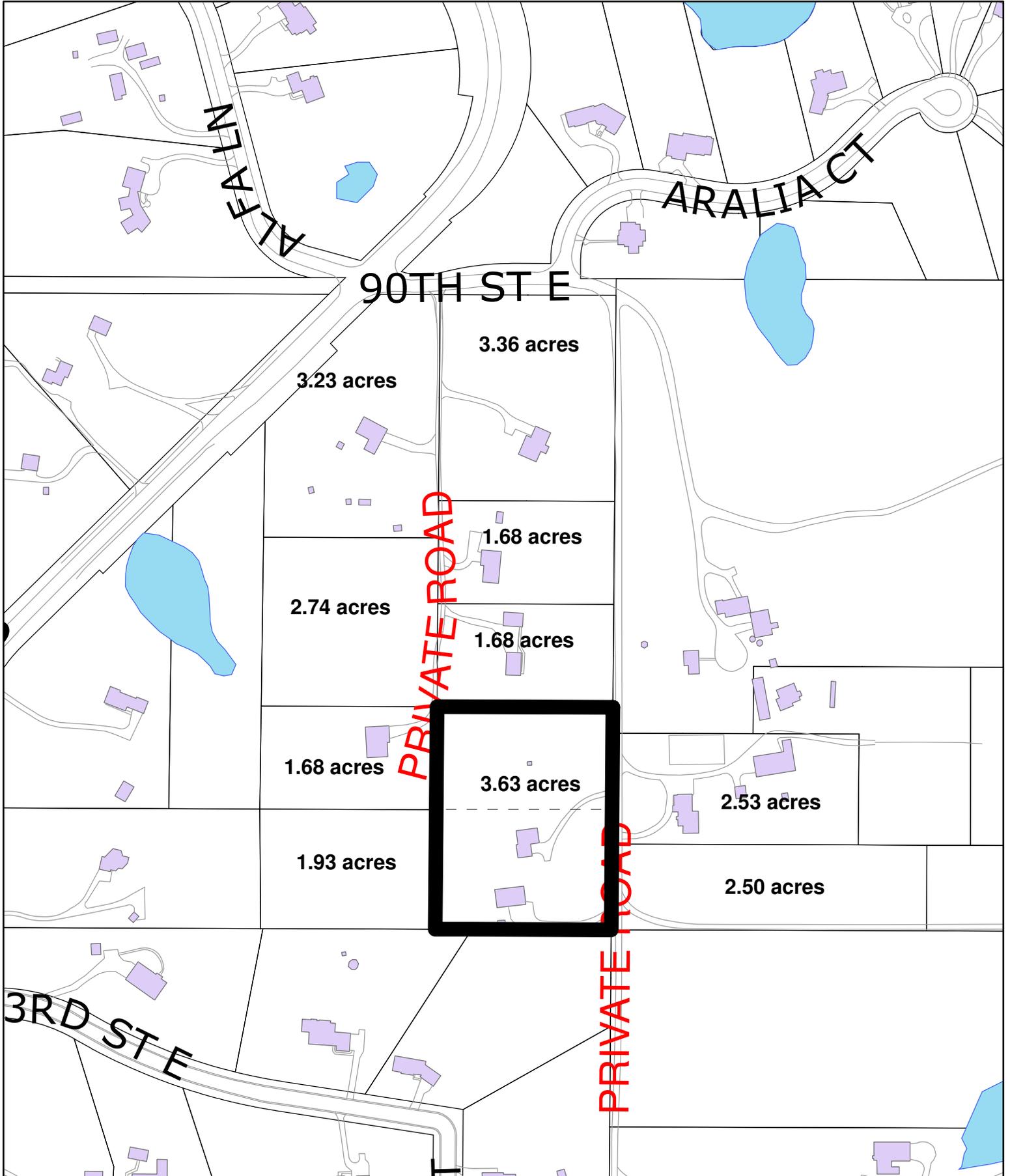
Legend

A, Agricultural	R-1C, Single Family (0.25 ac.)	R-4, Mobile Home Park	OP, Office Park	I-1, Limited Industrial
E-1, Estate (2.5 ac.)	R-2, Two-Family	B-1, Limited Business	PUD, Planned Unit Development	I-2, General Industrial
E-2, Estate (1.75 ac.)	R-3A, 3-4 Family	B-2, Neighborhood Business	OFFICE PUD	P, Public/Institutional
R-1A, Single Family (1.0 ac.)	R-3B, up to 7 Family	B-3, General Business	Comm PUD, Commercial PUD	Surface Water
R-1B, Single Family (0.5 ac.)	R-3C, > 7 Family	B-4, Shopping Center	MF PUD, Multiple-Family PUD	ROW



Surrounding Lot Sizes

Case No. 09-25WAV



PLANNING REPORT CITY OF INVER GROVE HEIGHTS

REPORT DATE: September 9, 2009 **CASE NO.:** 09-28C

HEARING DATE: September 15, 2009

APPLICANT: McDonald Construction

PROPERTY OWNER: Neil and Maureen Mulrooney

REQUEST: A Conditional Use Permit to allow for 27.5% impervious coverage to construct a new single family home, garage, sidewalk and driveway on an R-1C zoned lot.

LOCATION: 11617 Aileron Court

COMPREHENSIVE PLAN: LDR, Low Density Residential

ZONING: R-1C, Single family residential

REVIEWING DIVISIONS: Planning
Engineering

PREPARED BY:  Heather Botten
Associate Planner

BACKGROUND

Recently, Section 515.80 Subd. 8 - "R-1A, B, C" Single-Family Residential District was modified to allow up to 30% of impervious coverage with a conditional use permit. The property owner at 11617 Aileron Court would like to construct a new home, driveway, sidewalk, and porch with impervious coverage of about 27.5%.

	Square Feet	Percentage
Lot Area	14,775	-
Proposed Impervious Coverage (House, driveway, sidewalk, porch)	4,062	27.5%

SPECIFIC REQUEST

To develop the property as proposed the applicant is requesting a Conditional Use Permit to allow impervious coverage up to 27.5% on a lot in the R-1C, Single Family Residential District.

SURROUNDING USES: The subject site is surrounded by the following uses:

Single Family Residential; zoned R-1C, Single family; guided LDR,
Low Density Residential

EVALUATION OF REQUEST:

GENERAL CUP CRITERIA

Section 10-3A-5 of the Zoning Regulations lists criteria to be considered with all conditional use permit requests. This criterion generally relates to the Comprehensive Plan and Zoning consistency, land use impacts such as setbacks, drainage, and aesthetics, environmental impacts, and public health and safety impacts.

The proposed conditional use permit meets the above criteria. As shown in Exhibit A, the surrounding properties are all zoned single-family. The proposed single-family home will aesthetically fit in with the neighborhood. Additionally, all setbacks will be met and the applicant has agreed to comply with the storm water treatment conditions, which help maintain the drainage and storm water runoff on the applicant's property.

IMPERVIOUS SURFACE CUP CRITERIA

The City approved a temporary ordinance amendment allowing 25% impervious surface on a property; with a conditional use permit the impervious surface could be increased up to 30% provided the following criteria are met.

- a) A Storm Water Management System shall be constructed within the property that meets the Best Management Practices design criteria as set forth in the Northwest Area Ordinances and Storm Water Manual.
- b) The Storm Water Management System and Grading Plan (including necessary details for construction, showing proper location, material, size, and grades) shall be approved by the Engineering Division prior to ground disturbance or installation of the facility.
- c) The Storm Water Management System is considered a private system and the responsibility of maintenance is that of the owner.
- d) A storm water facilities maintenance agreement shall be entered into between the applicant and City to address responsibilities and maintenance of the storm water system.
- e) An escrow or fee, to be determined by the City Engineer, shall be submitted to the City with the Storm Water Management System submittal. The final amount and submittal process shall be determined by the City by the time the Owners are ready to submit the Storm Water Management System and Grading Plan.
- f) The soils shall be tested to determine the infiltration capacity to insure the storm water maintenance facility performs and functions within the assumed design parameters.

The proposed impervious surface on the lot is about 27.5%. The applicant and property owners have been made aware of the above criteria and the City's standard conditions for treating impervious surface.

Grading and Drainage. The Engineering Department has reviewed the request. The applicant/homeowner would have to mitigate the storm water runoff above the allowed 25%. If the Conditional Use Permit is approved they recommend the conditions listed below be included.

ALTERNATIVES

The Planning Commission has the following alternatives available for the requested action:

A. Approval If the Planning Commission finds the Conditional Use Permit to exceed the impervious coverage standards to be acceptable, the Commission should recommend approval of the request with at least the following conditions:

1. The site shall be developed in substantial conformance with the site plan dated August 10, 2009 on file with the Planning Department or as modified herein.
2. The impervious surface calculations have been provided; the owner shall provide a storm water management system to mitigate at least 370 square feet, or 2.5% of the 14,775 square foot lot size.
3. Any future impervious space additions for the respective lot will need to meet the requirements of the impervious space requirement at that time.
4. The temporary erosion control and permanent storm water management plan should capture and route storm water runoff in a manner that does not adversely impact the adjoining or downstream properties.
5. A Storm Water Management System shall be constructed within the property that meets the Best Management Practices design criteria as set forth in the Northwest Area Ordinances and Storm Water Manual.
6. The Storm Water Management System and Grading Plan (including necessary details for construction, showing proper location, material, size, and grades) shall be approved by the Engineering Division prior to ground disturbance or installation of the facility.
7. The Storm Water Management System is considered a private system and the responsibility of maintenance is that of the owner.
8. Prior to issuance of a building permit, a storm water facilities maintenance agreement shall be entered into between the applicant and City to address responsibilities and maintenance of the storm water system.
9. Prior to issuance of a building permit, an Inspection Escrow in the amount of \$370 (or 1\$ per square foot of impervious space to be treated, whichever is greater) and a Construction Escrow of \$1480 (or \$4 per square foot of impervious space to be treated, whichever is greater) shall be submitted to the City with the Storm Water Management System submittal. The final amount and submittal process shall be determined by the City by the time the Owners are ready to submit the Storm Water Management System and Grading Plan. The City Engineer reserves the right to have both a cash escrow for expenses, fees, inspections and maintenance requirements

and an additional construction escrow assuring the storm water facility is constructed properly.

10. The soils shall be tested to determine the infiltration capacity to insure the storm water maintenance facility performs and functions within the assumed design parameters.
11. Prior to release of the remainder of the Inspection Escrow and Construction Escrow, the storm water facility needs to be constructed in its entirety, vegetation planted, and approved by the Engineering Division.
12. All existing easements shall be shown on the building permit submittal to ensure that the proposed structures are not encroaching in an easement area dedicated to the City. If there is encroachment, it will be the sole discretion of the City Engineer to either accept or deny the proposed encroachment.

B. Denial If the Planning Commission does not favor the proposed Conditional Use Permit, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Based on the information in the preceding report and the conditions listed in Alternative A, staff is recommending approval of the conditional use permit request.

Attachments: Exhibit A - Location/Zoning Map
Exhibit B - Applicant Narrative
Exhibit C - Survey



McDonald Construction Case No. 09-28C

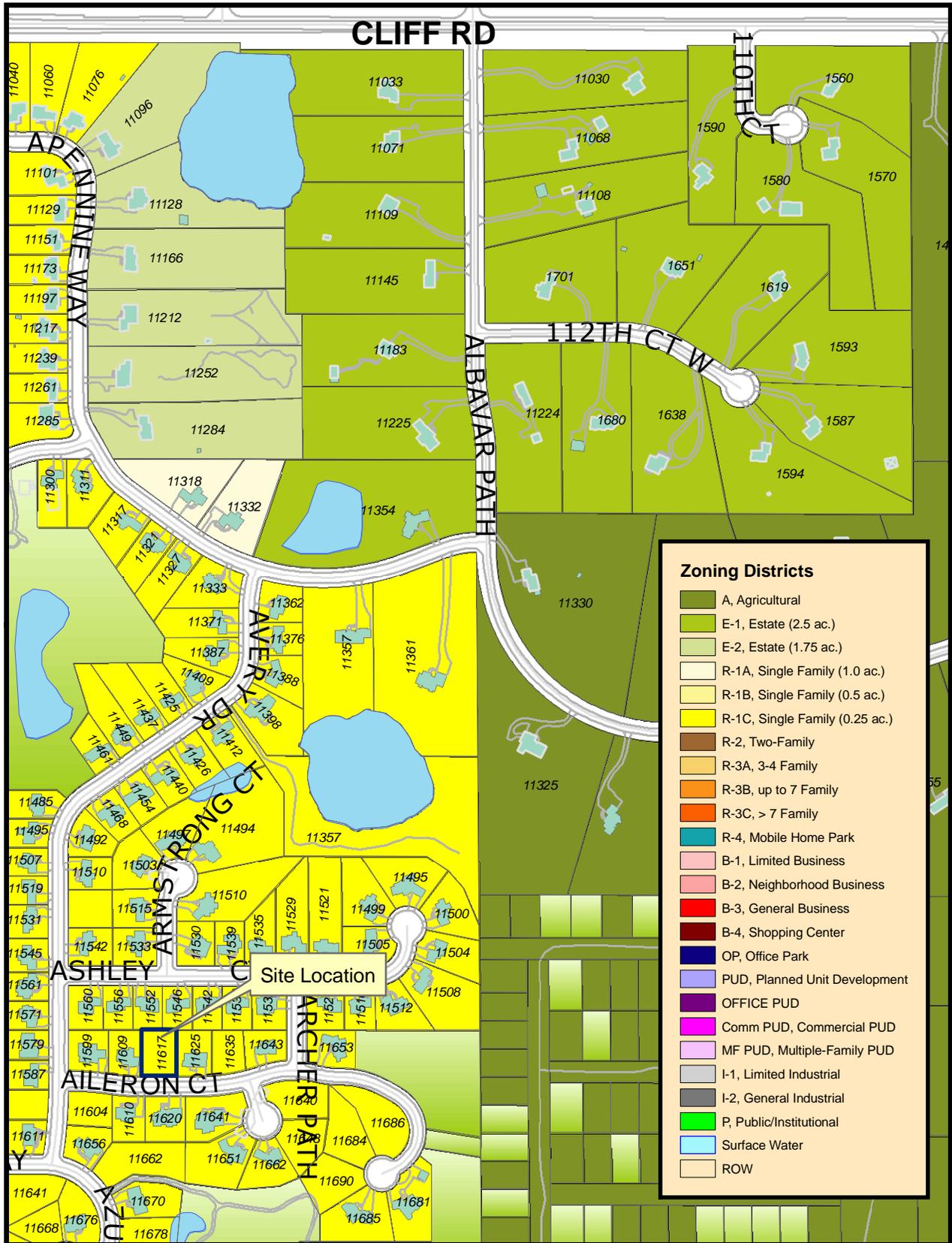


Exhibit A
Zoning and Location Map

To Whom It May Concern:

Neil & Maureen Mulrooney purchased a lot at 11617 Aileron ct I.G.H.
They designed a home that totals 4062 square feet of impervious surface
The 4062 includes the home, garage, sidewalk, front porch and driveway.
The lot is 14775 square feet in size. This puts the home 2.5% over the cities
25% impervious surface ordinance.

The Mulrooney's are asking for a conditional uses permit.
With the condition that they construct and maintain a rain garden that collects,
holds & perks 2.5% of the lots total square feet of rain water.

Sincerely



William J Winter

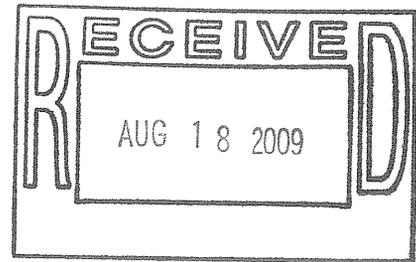


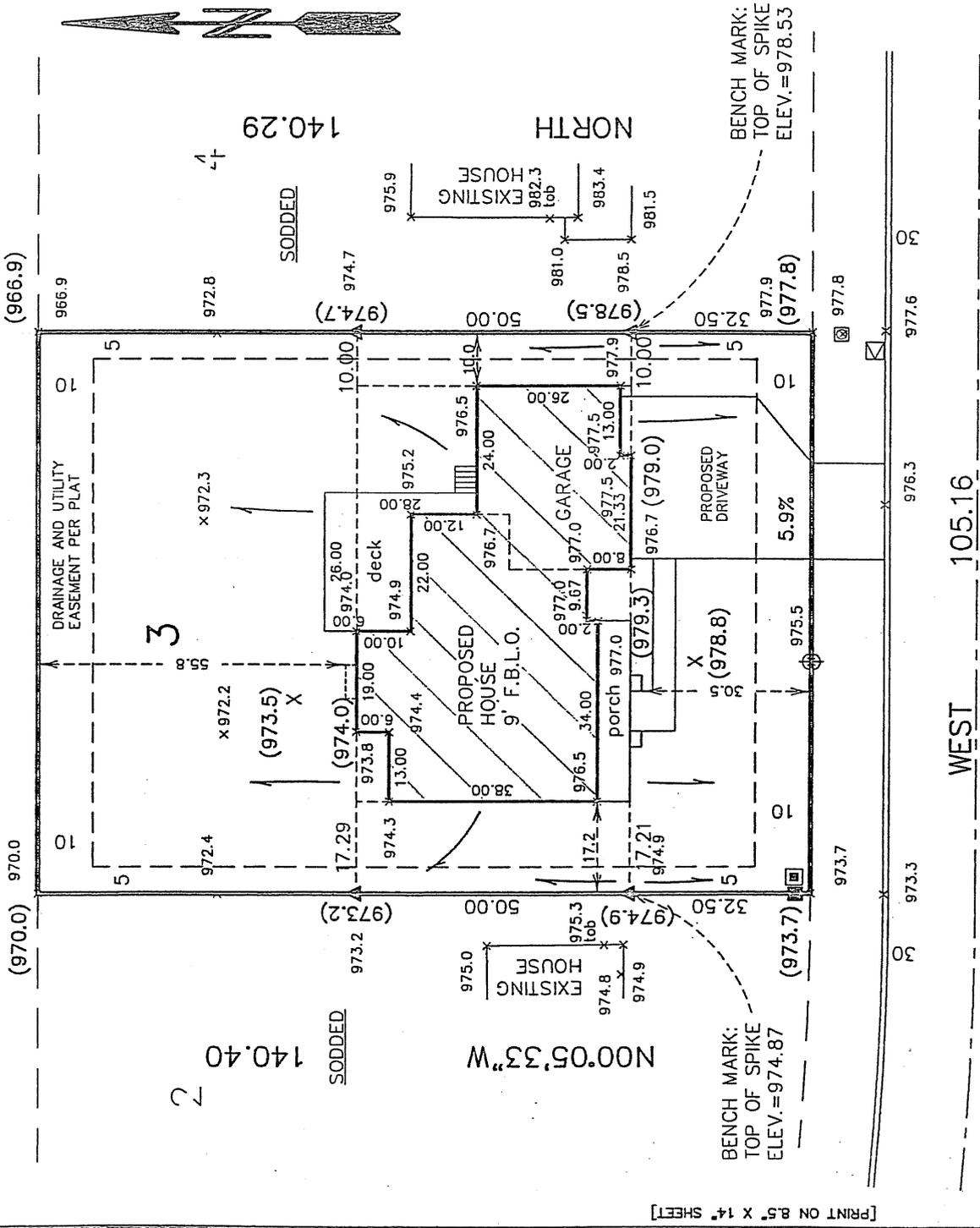
Exhibit B

Certificate of Survey for: MCDONALD CONSTRUCTION

ADDRESS: 11617 AILERON COURT, INVER GROVE HEIGHTS, MN
BUYER: MODEL: ELEVATION:

LOT AREA = 14,775 sq. ft.
HOUSE AREA = 2,767 sq. ft.
SIDEWALK AREA = 145 sq. ft.
PORCH AREA = 204 sq. ft.
DRIVEWAY AREA = 946 sq. ft.
COVERAGE = 27.5%

N89°56'11"W 105.39



[PRINT ON 8.5" X 14" SHEET]

BENCH MARK:
TOP NUT HYDRANT L4-5 B3
ELEV.=982.41

- NOTE: ADD BRICK LEDGE AS REQUIRED
- NOTE: GRADING PLAN BY HUMPHREY LAST DATED 4-14-05 WAS USED TO DETERMINE THE PROPOSED ELEVATIONS SHOWN ON THIS CERTIFICATE.
- NOTE: PROPOSED BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL LOCATION OF STRUCTURES ON THE LOT ONLY. CONTACT BUILDER PRIOR TO CONSTRUCTION FOR APPROVED CONSTRUCTION PLANS.
- NOTE: NO SPECIFIC SOILS INVESTIGATION HAS BEEN PERFORMED ON THIS LOT BY THE SURVEYOR. THE SUITABILITY OF SOILS TO SUPPORT THE SPECIFIC HOUSE PROPOSED IS NOT THE RESPONSIBILITY OF THE SURVEYOR.
- NOTE: THIS CERTIFICATE DOES NOT PURPORT TO SHOW EASEMENTS OTHER THAN THOSE SHOWN ON THE RECORDED PLAT.
- NOTE: CONTRACTOR MUST VERIFY DRIVEWAY DESIGN.
- NOTE: BEARINGS SHOWN ARE BASED ON AN ASSUMED DATUM

LOWEST ALLOWABLE FLOOR ELEV. : (970.5)

HOUSE ELEVATIONS : (PROPOSED)/ASBUILT

LOWEST FLOOR ELEVATION : (971.3)

TOP OF FOUNDATION ELEV. : (980.0)

GARAGE SLAB ELEV. @ DOOR: (979.0)

T.O.F. ELEVATION @ LOOKOUT: (974.5)

- X 000.00 DENOTES EXISTING ELEVATION
- (000.00) DENOTES PROPOSED ELEVATION
- DENOTES DRAINAGE AND UTILITY EASEMENT
- DENOTES DRAINAGE FLOW DIRECTION
- DENOTES SPIKE
- [000.0] DENOTES ELEVATION ON _____
- [XXX.X] DENOTES EMERGENCY OVERFLOW E.O.F.

WE HEREBY CERTIFY TO MCDONALD CONSTRUCTION THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY OF THE BOUNDARIES OF:

LOT 3, BLOCK 3, WOODLAND PRESERVE
DAKOTA COUNTY, MINNESOTA

IT DOES NOT PURPORT TO SHOW IMPROVEMENTS OR ENCROACHMENTS, EXCEPT AS SHOWN, AS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION THIS 7TH DAY OF AUGUST, 2009.

SCALE : 1 INCH = 30 FEET

REVISED:	NOTE:
B-10-09	STAKE

SIGNED: *[Signature]* PIONEER ENGINEERING, P.A.
BY: *[Signature]*

Peter J. Hawkins License No. 42299

PLANNING REPORT CITY OF INVER GROVE HEIGHTS

REPORT DATE: September 8, 2009

CASE NO.: 09-29ZA

HEARING DATE: September 15, 2009

APPLICANT: City of Inver Grove Heights

REQUEST: An **Ordinance Amendment** to Title 10, Chapter 16 – Nonconformities, relating to the maintenance and repair of nonconforming uses and structures

REVIEWING DIVISIONS: Planning

PREPARED BY:  Heather Botten
Associate Planner

BACKGROUND

The Minnesota Legislature amended Minnesota Statute 462.357, the statute that governs non-conforming properties a few years ago. To be consistent with state statute, the City Code should be amended to conform to Minn. Stat. 462.357, as amended. The amended language addresses improvements and changes to existing nonconforming uses and structures.

EVALUATION OF THE REQUEST

Based upon our analysis of Minn. Stat. 462.357 and the City Ordinance, staff has concluded that the City should amend City Ordinance Title 10, Chapter 16. More specifically, sections 10-16-4 (A) and (C) and 10-16-5 (C).

Section 10-16-4(A) should be amended to reflect that not only may owners of nonconforming uses or structures perform maintenance and repair on non-conforming uses and structures under the amended statute, but the owner may also "replace", "restore", or "improve" the non-conforming use or structure, as long as the owner does not expand it. Currently, City Ordinance permits only the performance or normal maintenance and necessary repairs and incidental alterations to nonconforming uses and structures.

Section 10-16-4 (C) should be amended to reflect that when the City issues a special permit for the reconstruction of a nonconforming use or structure that is rebuilt because of destruction of more than 50% of the market value of the nonconforming use or structure, the City may impose "reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property." Additionally this permit must be issued as a matter of right, rather than discretion by the City.

Finally, Section 10-16-5 (C) should be amended to reflect that not only may owners of nonconforming uses or structure make alterations, but they may also make *improvements* to their properties, assuming it does not expand or intensify the use of the nonconforming use or structure. Currently the ordinance only allows alterations to the nonconforming uses or structure.

ALTERNATIVES

The Planning Commission has the following actions available on the following requests:

- A. **Approval.** If the Planning Commission finds the amendment to be acceptable, the following action should be taken:
- Approval of an **Ordinance Amendment** to Title 10, Chapter 16 (Nonconformities) of the City Code adopting regulations related to the changes in Minnesota Statute.
- B. **Denial.** If the Planning Commission does not favor the proposed amendment, the above requests should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Staff recommends approval of the ordinance amendment as presented.

Attachments: Amended Ordinance- Chapter 16, Nonconformities

Chapter 16

NONCONFORMITIES

10-16-1: CONTINUANCE OF NONCONFORMITY:

- A. Any lawful nonconformity may be continued at the size and in a manner of operation existing upon the date that such use became a lawful nonconformity, except as hereinafter specified.
- B. Any lawful nonconforming use of land not involving a structure, and any lawful nonconforming use involving a structure with an assessor's full and true valuation, upon the effective date hereof, of one thousand dollars (\$1,000.00) or less may be continued for a period of thirty six (36) months, and billboards, as defined in this title, regardless of their valuation, may be continued for a period of thirty six (36) months after becoming nonconforming, whereupon such nonconforming use shall cease. (Ord. 1098, 11-8-2004)

10-16-2: DISCONTINUANCE OF NONCONFORMITY; CHANGE TO CONFORMING USE:

When any lawful nonconformity in any district is discontinued for a period of more than twelve (12) months or is changed to a conforming use, any future use of said structure or land shall be in conformity with the provisions of this title. (Ord. 1098, 11-8-2004)

10-16-3: CHANGE OF USE:

A lawful nonconforming use of a structure or parcel of land may be changed to a similar or more restrictive nonconforming use. Once a structure or parcel of land has been placed in a more restrictive nonconforming use, it shall not return to a less restrictive nonconforming use. (Ord. 1098, 11-8-2004)

10-16-4: MAINTENANCE AND REPAIRS:

- A. Normal maintenance, repair, replacement, improvement, and restoration of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use.
- B. Nothing in this title shall prevent the placing of a structure in safe condition when the building official declares said structure unsafe. (Ord. 1098, 11-8-2004)
- C. Whenever a lawful nonconforming structure shall have been damaged by fire, flood, explosion, earthquake, war, riot, act of nature or similar occasion, it may be reconstructed and used as before if it is reconstructed within twelve (12) months after such calamity, unless the damage to the building or structure is fifty percent (50%) or more of its fair market value as estimated by the building official and approved by the council, in which case, the reconstruction shall be for a use in accordance with the provisions of this title, except that where a structure is damaged more than fifty percent (50%) of its fair market value and no building permit has been applied for within 180 days of when the property is damaged, the owner may apply for a special permit for approval to reconstruct a nonconforming structure

for its use prior to the damage. If When the council grants such special use permit, the council may impose such conditions upon the permit as deemed necessary to mitigate any newly created impact on adjacent property or to protect public health, safety or welfare. (Ord. 1098, 11-8-2004; amd. 2008 Code)

10-16-5: ENLARGEMENT; ALTERATIONS:

- A. A lawfully existing nonconforming structure or structure containing a legally existing nonconforming use may expand its gross floor area by ten percent (10%) if the following criteria are satisfied:
1. A complete building permit application shall be submitted to the building inspections division, found satisfactory and issued prior to the commencement of any work on the expansion.
 2. The structure expansion shall meet all of the bulk standards for the zoning district within which the structure is located. A variance may be applied for if the structure expansion could not meet the respective bulk standards. The variance application and its review by the city shall be regulated according to section 10-3-4 of this title.
 3. If an expansion is requested under this subsection, the city may impose standards and/or conditions upon the underlying nonconforming use or structure for purposes of health, safety or welfare.
- B. A lawfully existing nonconforming structure or structure containing a legally existing nonconforming use may conditionally expand its gross floor area by up to thirty percent (30%) if the following criteria are satisfied:
1. A complete conditional use permit application shall be applied for and approved by the city council. Chapter 3, article A of this title shall regulate the city review and approval or denial of the conditional use permit.
 2. A complete building permit application shall be submitted to the building inspections division, found satisfactory and issued prior to the commencement of any work on the expansion.
 3. The structure expansion shall meet all of the bulk standards for the zoning district within which the structure is located. A variance may be applied for if the structure expansion does not meet the respective bulk standards. The variance application and its review by the city shall be regulated according to the section 10-3-4 of this title.
 4. If an expansion is requested under this subsection, the city may impose standards and/or conditions upon the underlying nonconforming use or structure for purposes of health, safety or welfare.
- C. Alterations or improvements may be made to a building containing lawful nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or bulk of the building, except that a garage may be added if none previously existed. (Ord. 1098, 11-8-2004)