

Agenda

Polk County Board of Adjustment

Tuesday, January 22, 2019 - 7:00 P.M.

Polk County Public Works Department, Planning & Development Division

5885 NE 14th Street, Des Moines, IA.

- A) Roll Call - Michael McCoy, Ron Fisher, Paul Kruse & Bonnie Thorn
- B) Election of 2019 Officers
- C) Acceptance of the Minutes from the Monday, December 17, 2018 meeting
- D) Opening Statement
- E) Unfinished Business - None
- F) New Business

Item 1 18/7516 Appeal of the Zoning Administrator's Interpretation

Request is made by Darren K. Sleister (property owner) represented by Laura R. Luetje with Lamberti, Gocke & Luetje. The appellant is challenging the Zoning Administrator's Interpretation that the present use of the dwelling on the subject property is not a Group Home as defined in the Polk County Zoning Ordinance, and therefore the present use is illegal and in violation of the Zoning Ordinance due to its occupancy by more than three (3) unrelated persons. The subject property is located at 2507 NW 84th Avenue, Ankeny, Section 28 of Crocker Township.

Item 2 18/7571 Variance Appeal Application

Request by Eric Quiner (property owner) for a Variance to the required landscaping standards for a commercial agri-tourism use. The subject property is located at 5085 Meredith Drive, Des Moines, Section 18 of Webster Township.

Item 3 18/7579 Variance Appeal Application

Request by Wild Paws, LLC / Megan Rude (prospective tenant/lessee) and Halbrook Rentals, LLC (property owner), being represented by Eric Cannon with Snyder & Associates, for three (3) separate Variances in order to accommodate a proposed Animal Services Use. A setback Variance to the separation requirements for an outdoor exercise area and structure sheltering animals, a Variance to the required parking standard for a personal services use, and a curbing Variance for the drive aisle. The subject property is located at 7050 NE 14th Street, Ankeny, Section 35 of Crocker Township.

Item 4 18/7582 Variance Appeal Application

Request by Timothy Casady (property owner) represented by Vic Piagentini with Associated Engineering Company of Iowa, for a side yard setback Variance to reduce the 15-foot side setback to approximately 13-feet to allow the property to be subdivided and retain the existing house. The subject property is located at 7990 NW 37th Street, Ankeny, Section 29 of Crocker Township.

- G) Communications/Discussion Items
- H) Zoning Administrator Report
- I) Adjournment.

The information identified on this agenda may be obtained in accessible formats by qualified persons with a disability. To receive more information or to request an accommodation to participate in a meeting, hearing, service, program, or activity conducted by this department, please contact the Polk County Public Works Department, Planning and Development Division, 5885 N.E. 14th Street, Des Moines, Iowa 50313, 515-286-3705.

Docket Number: 18/7516

Appellant: Darren K. Sleister (property owner),
1302 NW Cedarwood Drive, Ankeny, IA 50023;
represented by Laura R. Luetje with Lamberti,
Gocke, & Luetje, 210 NE Delaware Avenue, Suite
200, Ankeny, IA 50021

Appeal: Request to Appeal Polk County's Interpretation that the present use of the dwelling on the subject property is not a Group Home as defined in the Polk County Zoning Ordinance, and therefore the use is illegal and in violation of the Zoning Ordinance due to its occupancy by more than three (3) unrelated persons. The subject property is located at 2507 NW 84th Avenue, Ankeny, IA 50023, Section 28 of Crocker Township.

Subject Property and Surrounding Area / Land Use

The subject property is located at 2507 NW 84th Avenue, Ankeny within unincorporated Polk County, and is zoned "RR" Rural Residential District. The property is approximately 2.34 acres in size and is legally described as Lot 9 of Ol-Zel Acres. The subdivision plat of Ol-Zel Acres was recorded in 1968 and created 15 total residential lots at the northeast corner of NW 26th Street and NW 84th Avenue. The larger surrounding area within unincorporated Polk County was largely platted and developed residentially in the 1960's and 1970's. The area is currently a mix of "RR" Rural Residential, "LDR" Low Density Residential, and "MDR" Medium Density Residential zoning, and is developed primarily with single-family dwellings. The subject property contains an existing single-family dwelling and attached garage constructed in 1974, and is served by an existing onsite septic system according to County records. The house and driveway are situated at the southern end of the lot near its frontage onto NW 84th Avenue. The majority of the lot to the north is open space with some areas of woodlands.

This stretch of NW 84th Avenue intersects with NW 35th Street (Hwy 415) approximately one-half (½) mile to the west, and dead-ends approximately one-fifth (1/5) of a mile to the east as it approaches Rock Creek. The larger unincorporated area is situated west of the corporate limits of the City of Ankeny where they extend to the west along SW Irvinedale Drive. Ankeny's corporate limits also extend further west of Irvinedale Drive to the north and south of this area along Rock Creek; being to the north along NW Polk City Drive and to the south at the northwest corner of SW Irvinedale Drive and SW Oralabor Road (Hwy 415).

Timeline / Background

August of 2018

Staff received a complaint regarding the number of unrelated occupants residing at the subject property, including excess vehicles parked in the driveway and within the road right-of-way.

August 15, 2018

In response, staff mailed a letter to the owner that can be found at the end of this report as *Attachment A*. The letter explained the nature of the complaint, defined the potential violation, and requested additional information from the owner in order to make a determination regarding the number of unrelated persons.

August 21, 2018

Following receipt of the letter, the property owner/appellant (Darren Sleister) met with staff. During that meeting, the owner explained that he recently purchased the property with the intent

of using it for a campus fellowship program through Walnut Creek Church. The owner confirmed the property was already occupied by a number of unrelated young men as part of this program. Staff requested the owner provide this information in writing, along with any other details regarding the use and occupants. Staff communicated that an official determination would be made regarding the complaint following review of this material. Later that same day the owner provided a detailed description of the use; that correspondence can be found as *Attachment B* at the end of this report. As the email indicates, the property is occupied by a group of young men, including an assistant director, participating in a campus fellowship program through Walnut Creek Church and Des Moines Area Community College (DMACC). According to the explanation, all occupants are participants in the program, and held accountable to certain rules and standards, including no alcohol, routine chores, and participation in fellowship activities.

August 31, 2018

Based upon the written description and prior conversation with the owner, staff determined the use was permitted under the Polk County Zoning Ordinance's use description of a Group Home. This determination was detailed in a letter and sent to the appellant, and can be found as *Attachment C* to this report. At this same time, staff also discussed with the appellant the parking issues along the roadway, and encouraged him to limit activities that may cause a disturbance within the neighborhood. As the letter states, parking is not permitted along the roadway.

Pertinent Issues / Basis of Staff's Determination

As the determination letter (*Attachment C*) describes, at issue in this case is the relationship status of the occupants of the dwelling, and whether or not the use constitutes a Group Home as defined in Polk County's Zoning Ordinance. The "RR" Rural Residential zoning of the subject property permits one (1) single-family detached dwelling unit, which the Ordinance defines as, "a dwelling unit designed for and occupied by not more than one (1) family and having no roof, wall or floor in common with any other dwelling unit. Furthermore, the Ordinance defines *Family* as "One (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. This does not include a group home." In other words, the Ordinance regulates the relationship status of occupants so that no more than three (3) unrelated persons (as defined) may occupy a single dwelling unit. In conversations with the owner, staff understands there have been between eight (8) to fifteen (15) unrelated occupants residing at the subject property at any given time, fluctuating with the school calendar and program participation.

In meeting with the appellant and reviewing the information provided prior to the original determination, staff determined the use met the intent and ordinary description of a Group Home as described in the Article 4 Use Regulations section of the Ordinance. That use description is as follows, "Group care homes, group homes, and sheltered care homes where the residents and any staff live together in a family-type environment. The residents shall be encouraged to participate and live as a family unit. Such units shall be treated as single-family units, and the unit would be an existing single-family unit or a new unit constructed so as to appear to be a single-family building rather than an institutional facility." Within the Article 2 Definitions section of the Ordinance Group Homes are also defined as, "A community-based residential home that is licensed as a residential care facility under Iowa Code Chapter 135C or as a child foster care facility under Iowa Code Chapter 237 to provide room and board, personal care, habitation services, and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. A group home does not mean an individual foster family home licensed under Iowa Code Chapter 237." The

definition found in Article 2 of the Ordinance reflects the language added to Chapter 335 of Iowa Code regulating County Zoning. The language was added several years ago by the Iowa Legislature to ensure that group home definitions within local zoning ordinances did not exclude State approved housing for persons with qualified disabilities, thereby ensuring that such uses would be allowed in all residential zoning districts. Staff's initial determination relied upon the broader Group Home use description within Article 4, and less on the definition within Article 2.

September / Early October of 2018

Following staff's determination as documented within the August 31, 2018 letter, the County continued to receive complaints regarding the subject property, including written challenges to the interpretation of a Group Home. The complaints included the following: There were frequent gatherings/parties at the property with vehicles parked along the adjacent roadway, there were too many vehicles parked on the property within the driveway and on grass, the property continued to be occupied by more than three (3) unrelated persons, and the County had erred in its interpretation of its own Ordinance regarding Group Homes. In response, staff explained to the complainants that the Ordinance does not regulate the number of vehicles parked on a residential property so long as they are licensed and operable. Staff also contacted the appellant to discuss the issues of large gatherings and parking along the roadway. The appellant explained the events were planned activities through the church and fellowship program, to which staff replied they constitute a Special Event use under the Ordinance and are not permitted within the zoning district. Staff also reiterated to the appellant that parking along the roadway was prohibited under State Code due to the width of the road even though "no parking" signs are not present.

Staff kept in contact with the appellant and made him aware of the ongoing complaints. Staff encouraged the appellant to hold a neighborhood meeting to establish better relations with neighbors and address their concerns. This meeting took place on Thursday, October 4, 2018. Staff was not in attendance. During this same time period staff also reached out to the County Attorney's Office to discuss the ongoing issue. The County Attorney's Office responded that they did not believe the use of the subject property constituted a Group Home under the Ordinance. They relied on the definition of a Group Home within Article 2, which defines State licensed care facilities for persons with qualified disabilities. The Attorney's Office concluded the use does not constitute a group care home or sheltered care home under any common or ordinary definition. The appellant's use of the property does not provide any type of care to unrelated persons beyond shelter. In the absence of the provision of some type of legitimate care, the intent of the Ordinance to regulate the negative externalities of multiple unrelated persons residing within a single dwelling unit is not upheld.

October 18, 2018

Staff issued a revised determination letter to the appellant; this can be found as *Attachment D*. Within this letter, staff informed the appellant that after further consideration the County no longer considered the use a Group Home under the Ordinance, and therefore the more than three (3) unrelated persons residing at the property was illegal and in violation of the Zoning Ordinance. Staff met with the owner a short time thereafter and explained what the County saw as viable options moving forward. These included: Filing an appeal of the County's Interpretation to the Board of Adjustment within 30 days; reducing the number of unrelated occupants to no more than three (3); exploring the option of certifying the use as a group home with the State; or, bringing forth a text amendment to the Zoning Ordinance which would accommodate the use.

November 16, 2018

An official application and filing fee was received for an Appeal to the Board of Adjustment. The Appeal is to the County's Interpretation that the use does not constitute a Group Home as defined in the Ordinance, and is therefore illegal and in violation of the Zoning Ordinance due to its occupancy by more than three (3) unrelated persons. The Appeal application can be found as *Attachment E* to this report.

Analysis

The existing single-family dwelling on the subject property is a permitted use under the Ordinance, which defines *Dwelling, Single-Family Detached* as "A dwelling unit designed for and occupied by not more than one (1) family and having no roof, wall or floor in common with any other dwelling unit. Furthermore, the Ordinance defines *Family* as "One (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. This does not include a group home." The appellant contends the use of the property qualifies as a Group Home under the Ordinance, and as previously determined in the County's August 31, 2018 letter (see *Attachment C*). The Ordinance contains a use description of a Group Home within Article 4 as follows, "Group care homes, group homes, and sheltered care homes where the residents and any staff live together in a family-type environment. The residents shall be encouraged to participate and live as a family unit. Such units shall be treated as single-family units, and the unit would be an existing single-family unit or a new unit constructed so as to appear to be a single-family building rather than an institutional facility." The Ordinance also contains a definition of a group home within Article 2 as follows, "A community-based residential home that is licensed as a residential care facility under Iowa Code Chapter 135C or as a child foster care facility under Iowa Code Chapter 237 to provide room and board, personal care, habitation services, and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. A group home does not mean an individual foster family home licensed under Iowa Code Chapter 237."

In addition to challenging the County's revised Interpretation regarding the Group Home status of the subject property, the Appeal (*Attachment E*) further contends that, "even if the October 18th Revised Determination is a correct interpretation of the Ordinance, which we disagree with, that our client acted to his detriment upon a written determination from the Planning Division and based upon that representation and determination that he should be excepted from compliance with the Ordinance. Our client will be substantially damaged by the October 18th Revised Determination without any recourse other than this Appeal." Similarly, the appeal states, "based upon the original determination . . . our client proceeded with this project, and had the Planning Division originally found that his use would not be in compliance he would have either sought a text amendment to the Ordinance at that time or proceeded with a different plan for the property. Now, months and tens of thousands of dollars later, our client is stuck with a property that was designed for a use approved by the County to only have that determination arbitrarily and capriciously reversed after the Planning Division received push back from a disgruntled homeowner in the neighborhood." However, the facts and timeline do not support this assertion that the homeowner has been the subject of detrimental reliance due to information from Polk County.

Through facts gathered by Polk County during this process, including the owner's admission, significant investment was made into the property and the use was clearly well established prior to the first correspondence with the County in August of 2018. Prior to this time the owner completed interior remodeling work to establish the use, some of which without the required

building permits from our office, including the installation of basement egress windows to create additional bedrooms. The owner has since taken out retroactive permits so that we may inspect this work to ensure it meets building code, but inspections have not been scheduled to-date. The owner also converted the attached garage to a workshop space. Staff has communicated this area would be looked at once an inspection was scheduled for the egress windows to determine if other building permits are required.

In addition to the fact that the use was well established and significant investment made prior to any correspondence with the County, there was at most a period of 48 days between the County's original determination (August 31, 2018) and revised determination (October 18, 2018). With remodeling work already completed and the use in full effect by the time of the County's first received complaint and knowledge of the use, only documented investment made in the property during this time period could be argued to be the result of detrimental reliance upon the County, of which there is none. Lastly, the argument that investment in the property has rendered the appellant "stuck" with a property designed for a use no longer permitted is inaccurate. The structure is still fundamentally a single-family dwelling unit. The appellant may retain or sell the property, and it can still be utilized as a rental or owner-occupied residence, or put to any other use that is permitted within the zoning district.

It is important to note that the owner has contended throughout this process that prior to closing on the property in early 2018 he contacted someone at Polk County and was informed this use would be permitted. However, there is no documentation (letter, email, or even the name of the contact person) to support this claim. Staff does not doubt the appellant may have contacted someone at Polk County and received answers to various questions regarding the property. However, it is highly suspect that the appellant would have inquired about a fraternal group home of unrelated occupants and not been directed to the appropriate contact person and given a written answer, such as a zoning interpretation letter. Furthermore, prior to significant investment in any property in the County it is the responsibility of the property owner to ensure the use is permitted. The appellant has produced no documentation that Polk County granted approval of this use, or provided any information regarding the use at this property, prior to the County's initiated correspondence in August due to a complaint. An internal search of County records has also produced no such documentation.

Impact of the Board's Decision

If the Board upholds the County's revised Interpretation, they would be determining the current use is not a Group Home, and by extension, that it is not permitted due to the occupancy of the dwelling unit by more than three (3) unrelated persons. The appellant would then have 30 days to appeal the Board's decision to District Court if they so choose. Following the 30-day period, and pending any appeal and decision by District Court, the owner would be required to bring the property into compliance.

If the Board overturns the County's revised Interpretation, they would be determining the use does constitute a Group Home as defined in the Ordinance. This decision would effectively permit the use at the subject property. Similarly, any aggrieved parties would have 30 days to appeal the Board's decision to District Court. Following the 30-day period, and pending any appeal and decision by District Court, the use would be permitted at the property and allowed to continue.



COUNTY OF POLK
Public Works Department

5885 NE 14 Street
Des Moines, Iowa 50313
Ph. 515.286.3705
Fax 515.286.3437
Email: publicwrks@co.polk.ia.us
www.co.polk.ia.us

August 15, 2018

Darren K. Sleister
1302 NW Cedarwood Drive
Ankeny, IA 50023

Re: Complaint of unrelated persons living together at 2507 NW 84th Avenue, Ankeny

Mr. Sleister:

Our office recently received a complaint stating that numerous unrelated persons are living at the property owned by you and addressed as 2507 NW 84th Avenue, Ankeny, IA 50023 within unincorporated Polk County. This property is zoned "RR" Rural Residential District, which permits one (1) single-family detached dwelling unit. The Polk County Zoning Ordinance defines *Dwelling, Single-Family Detached* as "A dwelling unit designed for and occupied by not more than one (1) family and having no roof, wall or floor in common with any other dwelling unit. Furthermore the Ordinance defines *Family* as "One (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. This does not include a group home."

Specifically, the complaint stated that at least four (4) or five (5) unrelated persons currently occupy the single-family dwelling unit at 2507 NW 84th Avenue. We ask that you please contact our office to clarify the occupancy and relationship status of the persons residing on this property. We may require additional information or inspection to confirm these details and determine if a violation exists.

Sincerely,

A handwritten signature in cursive script that reads "Brian McDonough".

Brian McDonough, Planner

cc: Bret VandeLune, Planning & Development Manager

Attachment B

From: dhsholdings@mchsi.com
To: [Brian McDonough](#)
Subject: 2507 NW 84th Ave., Ankeny IA 50023
Date: Tuesday, August 21, 2018 3:45:41 PM

Mr. McDonough,

Thanks for taking the time today to talk through the complaint received regarding this property.

As we discussed, this property is occupied by a group of young men who attend an outreach program of Walnut Creek church called "Campus Fellowship" [CF] at DMACC. CF is a Christian-based group who gather to worship, learn about the bible and fellowship together. CF has a larger presence including groups at both Drake and Grandview University. Being a student is NOT a pre-requisite for participation in CF. But being actively involved in CF is a requirement to live at this address. The house is dry and open to only male residents. A CF assistant director lives at 25087 NW 84th currently. This is part of the process to establish the house culture, habits and candidly pride. This group is truly a fraternal, family unit in the most functional sense. They have a "chore board" to assure the property remains neat and clean both inside and out. They have a "prayer board" in which scripture is held out for learning and those in need are kept in prayer. The young men cook, clean, do laundry and learn to live/support each other. They are self-policing and are committed to being both good stewards of their home as well as good neighbors toward those around them.

This house is modeled after another property I own at 1215 34th Street, Des Moines [aka "Big Blue" because its 6,000 sq ft and exterior is painted blue] which is the original CF resident location. Big Blue started in 2004, is running very strongly 14 years later and has helped mold well over 100 young men. The same rules apply: dry house, male residents only, no overnight female guests, residents responsible for cleaning/lawn care etc to maintain the property.

My sincere hope is that we can sift through the zoning rules/regulations/case-law to allow this location to remain in tact as its truly a unique way for young men to learn how to live both on their own and with others. From having had phone conversations with the County prior to renovating this property it was my understanding that this approach would be completely within the rules/statutes/codes of Polk County. It was NOT my intent to "pull a fast one" in any sense. Please let me know if there is anything else needed to help sort this out. If the person lodging the complaint wishes to speak with me directly I'm happy to discuss any issues/concerns they may have.

Kind Regards,

Darren Sleister
515-710-4031



COUNTY OF POLK
Public Works Department

5885 NE 14 Street
Des Moines, Iowa 50313
Ph. 515.286.3705
Fax 515.286.3437
Email: publicwrks@co.polk.ia.us
www.co.polk.ia.us

August 31, 2018

Darren K. Sleister
1302 NW Cedarwood Drive
Ankeny, IA 50023

Re: Determination regarding complaint of unrelated persons residing at 2507 NW 84th Avenue, Ankeny

Mr. Sleister:

In a previous letter dated August 15, 2018 our office contacted you regarding a complaint of unrelated persons residing at property owned by you at 2507 NW 84th Avenue, Ankeny, IA 50023 within unincorporated Polk County. Specifically, the complaint stated that numerous unrelated persons occupy the single-family dwelling unit on the property, and there were some disruptions to the neighborhood including vehicles parked in the street along NW 84th Avenue. This property is zoned "RR" Rural Residential District, which permits one (1) single-family detached dwelling unit. The Polk County Zoning Ordinance defines *Dwelling, Single-Family Detached* as "A dwelling unit designed for and occupied by not more than one (1) family and having no roof, wall or floor in common with any other dwelling unit. Furthermore, the Ordinance defines *Family* as "One (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. This does not include a group home."

Following our initial letter we met at our office where you explained the property is occupied by a group of young men as well as an assistant director as part of a religious-based campus fellowship program through Walnut Creek Church. Following our meeting, you provided a detailed email regarding the program and its function at this property. From that written explanation, our office understands the group of individuals residing on the property functions as a fraternal family unit centered around the common ideals of Christian fellowship. As such, this use is classified as a Group Home under Polk County's Zoning Ordinance.

Group Homes are defined in Article 4, Division 4, Section 3(D) of the Ordinance as, "Group care homes, group homes, and sheltered care homes where the residents and any staff live together in a family-type environment. The residents shall be encouraged to participate and live as a family unit. Such units shall be treated as single-family units, and the unit would be an existing single-family unit or a new unit constructed so as to appear to be a single-family building rather than an institutional facility." Based upon our conversation and the written description provided, it is our office's determination that your use of this property clearly meets the definition of a Group Home as defined in the Ordinance. Furthermore, under Article 4, Division 2, Table 4.1 (Table of Uses), Group

Homes are a permitted use within the "RR" Rural Residential District, and therefore this is a permitted use of the property located at 2507 NW 84th Avenue, Ankeny.

Staff would like to clarify the issue of parking along NW 84th Avenue. While "no parking" signs are not currently posted, the County Engineer has confirmed that due to the width of the roadway parking is not permitted in this area per State Code. If the Polk County Sheriff's Office receives a complaint they have the authority to tow vehicles in violation.

Please feel free to contact our office with any questions or concerns.

Sincerely,



Brian McDonough, Planner

cc: Bret VandeLune, Planning & Development Manager



COUNTY OF POLK
Public Works Department

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October 18, 2018

Darren K. Sleister
1302 NW Cedarwood Drive
Ankeny, IA 50023

Re: Revised determination regarding unrelated persons residing at 2507 NW 84th Avenue, Ankeny

Mr. Sleister:

Over the past two (2) months, our office has received numerous complaints regarding the number of unrelated persons living at 2507 NW 84th Avenue. On August 15, 2018, we sent you a letter detailing the initial complaint and explaining the Zoning Ordinance definitions of *Dwelling*, *Single-Family Detached* and *Family*. In that letter we requested additional details regarding the occupancy and relationship status of the occupants at this address in order to appropriately respond to the complaint. To reiterate that letter, the property at 2507 NW 84th Avenue, Ankeny is located in the “RR” Rural Residential District, which permits one (1) single-family detached dwelling unit. The definition of single-family detached dwelling as defined in our Ordinance includes, “a dwelling unit designed for and occupied by not more than one (1) family.” Family is further defined as, “one (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. This does not include a group home.”

Following our August 15, 2018 letter, we met in person at our office where you explained the property was occupied by a group of young men and an assistant director as part of a religious-based campus fellowship program through Walnut Creek Church. At that meeting, we requested you provide a detailed written explanation of the use, which you provided via email on August 21, 2018. Based upon this information, our office determined the use constituted a Group Home under Polk County’s Zoning Ordinance, and was therefore a permitted use. On August 31, 2018, we sent you a letter documenting this determination. That letter included the description of Group Homes within Article 4, Division 4, Section 3(D) of the Polk County Zoning Ordinance, and their status as permitted uses within the “RR” Rural Residential District, upon which our determination was based.

In the weeks since that determination, our office has received continued complaints of multiple unrelated persons occupying the property, including direct challenges to our determination of the use as a Group Home. In response, we sought input from the Polk County Attorney’s Office. After review, the County Attorney’s Office has determined the use does not qualify as a Group Home under the County’s Ordinance, and is therefore not permitted. This revised determination by Polk County effectively renders the current use

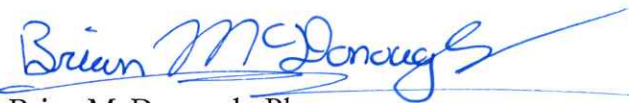
Air Quality Building Inspection Development Services Engineering
Planning Secondary Roads Utilities Weed Commission Weatherization

of the property at 2507 NW 84th Avenue illegal and in violation of the Zoning Ordinance due to more than three (3) unrelated persons residing at the single-family dwelling on the property. As staff, we have put together what we see as your options in light of this revised determination.

The first option would be to reduce the number of unrelated occupants to no more than three (3), and work with our office so that we may verify this has occurred. Another option is to work with the State to determine if this use meets the definition of a qualified residential care facility under Iowa Code Chapter 135C, and if so, obtain State licensure. If you can obtain this status from the State, then Polk County can re-evaluate the conditions under which the use may be a permitted Group Home on this property under our Ordinance. An additional option available to you is to appeal the County's revised determination to the Polk County Board of Adjustment. We can provide additional details and an application form upon request.

Please feel free to contact our office with any questions or concerns. We can certainly make time to meet with you in person to discuss any of this further if you desire. However, we wanted to give you an opportunity to review this information in writing prior to meeting.

Sincerely,



Brian McDonough, Planner

cc: Bret VandeLune, Planning & Development Manager
Bob Rice, Public Works Director

Attachment E

LGL
LAMBERTI, GOCKE & LUETJE

JEFFREY M. LAMBERTI
JAMES M. GOCKE
LAURA R. LUETJE

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

210 N.E. DELAWARE AVENUE
SUITE 200
ANKENY, IOWA 50021
515-964-8777
FAX 515-964-8796
www.ankenylaw.com

WILLIAM C. STRONG
STEPHEN J. SWANSON

VIA HAND DELIVERY

November 16, 2018

County of Polk, Board of Adjustment
Public Works Department
5885 NE 14th Street
Des Moines, IA 50313

RECEIVED BY POLK
COUNTY PUBLIC WORKS
2018 NOV 16 PM 12:16

RE: 2507 NW 84th Ave., Ankeny, IA – Darren K. Sleister

Dear Board of Adjustment:

Please be advised that our office has been retained by Darren K. Sleister, the titleholder of the property locally known as 2507 NW 84th Ave., Ankeny, Polk County, Iowa (hereinafter the “Property”) to assist with an appeal of an adverse determination regarding his current use of the Property.

Our client originally worked with the Polk County Public Works Department, Planning Division to determine if his proposed use of the Property as a group home for unrelated adults to reside and further their fellowship while attending school at the Des Moines Area Community College would be compliant with the Polk County Zoning Ordinance (hereinafter the “Ordinance”). Based upon several communications with the Planning Division, our client was advised that the Planning Division would consider his proposed use to be a group home under the Ordinance, and that it would be compliant with the Ordinance and applicable Zoning District.

Thereafter, our client engaged in a remodeling of the Property to design it for the use of a home for several unrelated male students to reside at under a program operated by a local church. Our client expended thousands of dollars to complete the projected, entered into agreements for the students to reside at the Property, and has proceeded with the understanding that his use is in compliance with the Ordinance.

In fact, following a complaint from a neighbor that too many vehicles were parked on the street, our client received a letter dated August 31, 2018, wherein our client was advised by the Planning Division that his proposed use fell within the uses permitted within the Rural Residential District designation for the

Property. The August 31, 2018 letter, a copy of which is enclosed for your reference, expressly states that the use of the property by our client falls under Article 4, Division 4, Section 3(D) and Article 4, Division 2, Table 4.1 of the Ordinance as a group home.

Our client continued to act in reliance upon this written determination of compliance with the Ordinance, and to date, has taken all necessary steps pursuant to that determination to remain in compliance with the Ordinance.

On October 18, 2018, our client received a “Revised Determination Regarding Unrelated Persons Residing at 2507 NW 84th Avenue, Ankeny” from the Polk County Public Works Department (hereinafter the “Notice”), a copy of which is enclosed. The Notice implies that Polk County has received numerous complaints relating to unrelated individuals residing at the property, and reversed the prior August 31, 2018 determination that our client’s use was in compliance with the Polk County Zoning Ordinance. It appears that this letter was generated after a further review by the Polk County Attorney’s Office, and fails to take into consideration the fact that our client had acted in reliance upon the Planning Division’s prior determination and repeated assurances that he could proceed with his use of the Property.

Based upon the original determination of compliance with the Zoning Ordinance our client proceeded with this project, and had the Planning Division originally found that his use would not be in compliance he would have either sought a text amendment to the Ordinance at that time or proceeded with a different plan for the Property. Now, months and tens of thousands of dollars later, our client is stuck with a Property that was designed for a use approved by the County to only have that determination arbitrarily and capriciously reversed after the Planning Division received push back from a disgruntled homeowner in the neighborhood.

It is our position that the Planning Division’s original assessment of the definition of a “group home” within the Ordinance, and our client’s use of the Property, falls within the intent and plain meaning of the Ordinance. It is further our position that even if the October 18th Revised Determination is a correct interpretation of the Ordinance, which we disagree with, that our client acted to his detriment upon a written determination from the Planning Division and based upon that representation and determination that he should be excepted from compliance with the Ordinance. Our client will be substantially damaged by the October 18th Revised Determination without any recourse other than this Appeal.

Our client is willing and able to work with the Planning Division and the neighborhood to develop a compromise, and have an open dialogue about his use of the Property as it provides a significant benefit to young male students at the Des Moines Area Community College to advance their fellowship, develop as young and emerging citizens, give back to the community, and to learn how to transition to adulthood.

Our client requests that the Board place this matter on its docket for hearing, order the Planning Division to suspend any and all enforcement pursuant to the Revised Determination in its October 18th letter pending the ruling from the Board, and for such further relief as the Board deems just and equitable under the premises. We trust that the Board will reach an appropriate and just determination under the law, and will look forward to working with the Board on this matter. Should you require any additional information or documentation, do not hesitate to contact our office.

Sincerely,



Laura R. Luetje
Attorney at Law

Enclosures

CC: Client, by e-mail

Appeal: Landscaping Variance from the screening requirements for a commercial Agri-Tourism use. Specifically, a variance for portions of the northern peripheral bufferyard and the western street bufferyard to eliminate the required canopy trees.

Surrounding Area / Land Uses

The subject property is located at 5085 Meredith Drive, and is legally described as the W½ of Lot 66 and part of the W½ of Lot 65 of Lovington, within Section 18 of Webster Township. The property is zoned “LDR” Low Density Residential District, and is approximately 0.93 acres in size. The subject property is a corner lot with frontage along the north side of Meredith Drive as well as along the east side of NW 51st Street. The larger surrounding area includes the unincorporated neighborhoods of Lovington and Piekenbrock. This area is bordered on the north by Interstate 80/35, to the south by Meredith Drive, to the west by Merle Hay Road (Hwy 28), and to the east by Beaver Avenue. See *Attachment A* to this report for a vicinity map of the subject property and surrounding area.

The area is primarily zoned “LDR” Low Density Residential District and developed with single-family homes. There are also a few existing commercially zoned and utilized properties along the north side of Meredith Drive approaching Merle Hay Road as well as along the east side of Merle Hay Road extending north towards the Interstate. The local streets serving the unincorporated neighborhoods of Lovington and Piekenbrock extend north from Meredith Drive. They have narrow pavement and right-of-way widths, and there are no sidewalks. The City of Des Moines primarily lies south of Meredith Drive, but their corporate limits include some commercial property on the east side of Merle Hay Road as well as a few residential developments on the north side of Meredith Drive. The City of Urbandale corporate limits begin along the west side of Merle Hay Road.

History / Background Information

The appellant, Eric Quiner, and his wife, Jennifer Quiner, purchased the subject property in October of 2015 and began establishing an urban garden the following growing season, known as Dogpatch Urban Gardens. In March of 2016 Polk County approved a plat of survey which split off an approximately one-half (½) acre parcel from the adjacent property at 4620 NW 50th Street. This new parcel was joined to the southern half of the subject property to form the current 0.93-acre configuration. Through initial communication with the owners, it was understood they intended to grow and sell produce on the property. The Polk County Zoning Ordinance allows temporary farm stands for the seasonal sale of produce so long as such uses are not open for more than six (6) months per year, and 50% or more of the products sold are grown onsite or within the County. Additional stipulations require that signage not exceed 35 square feet, and that the stand location and parking not be within the County right-of-way or obstruct traffic visibility. The intent of this regulation is to permit onsite seasonal sales of produce by individual property owners and local producers. During initial conversations, staff communicated this temporary use provision to the owners, and explained that their proposed produce sales use at the subject property would be covered under this provision so long as the requirements are continually met. As their business expanded, it eventually became necessary to legitimize the operation as an Agri-Tourism use through a Conditional Use Permit process.

In March of 2017 the Polk County Board of Adjustment approved a Conditional Use Permit request, in accordance with staff's recommendation, which permitted a permanent storefront and certain special events at the subject property as accessory commercial Agri-Tourism uses. The Polk County Zoning Ordinance includes an Agri-Tourism use category, which allows accessory commercial uses when they are subordinate to a legitimate, principal agricultural use on the same property. Staff recommended, and the Board of Adjustment affirmed and concluded, that the established urban garden on the subject property was a principal use and the commercial storefront and special events uses could be permitted as accessory Agri-Tourism uses. The approval was subject to several conditions, as recommended by staff and agreed to by the owners. Those conditions included approval of an engineered site plan, which legally establishes the use and compliance with all County regulations. The site plan was approved in March of 2018, and a copy can be found as *Attachment B* to this report.

The property contains an existing single-family dwelling and detached garage, which the owners have stated is a rental unit. The property also contains an existing 24' x 40' (960 square feet) building utilized as the commercial storefront, a large greenhouse structure, and garden plots. The approved site plan (*Attachment B*) proposed a new 14' x 40' (560 square feet) addition to the commercial storefront building, which has been permitted by the County and is currently under construction. This new addition will contain required bathrooms as well as a food processing area and walk-in cooler. The site plan also details the screening requirements along portions of the east, north and west property lines. In March of 2018, the Board of Adjustment granted four (4) variances for this property, including a landscaping variance for the southern portion of the eastern peripheral bufferyard. This variance eliminated the required two (2) canopy trees and six (6) shrubs in the eastern bufferyard. The other variances granted at that time included a setback variance for the commercial storefront building, a height variance for a fence enclosing a garden plot area, and a paving/curbing variance for portions of the driveway and circulation/parking areas onsite.

31 notices were sent to neighboring property owners within the 250-foot notification boundary for this current request. To-date staff has received three (3) responses in support (2 written responses and 1 phone call) and none in opposition of the request.

Summary of Request

Article 10 of the Ordinance establishes screening standards for all non-residential uses. A combination of landscape plantings, fencing, and/or berms may be used to achieve the required screening for a particular property. Due to the commercial Agri-Tourism uses approved on the subject property, and the single-family residential uses adjacent to the north and east, a peripheral bufferyard is required in these areas in order to screen adjacent residential properties. A street bufferyard is also required along a portion of the western property line adjacent to NW 51st Street. The appellant requests a variance for portions of the northern peripheral bufferyard and the western street bufferyard to eliminate a total of ten (10) required canopy trees in these areas (8 trees within the northern bufferyard and 2 within the western bufferyard). A six (6) foot tall privacy fence is still required for the northern peripheral bufferyard, which has been installed at this time. The appellant has also communicated they intend to plant lettuce and similar vegetables within this area. In addition, while approval of the variance would eliminate the two (2) required canopy trees within the street bufferyard, a total of 28 shrubs are still required within this area.

Natural Resources

The subject property is not located within a designated floodplain, and does not contain other environmental hazards or features. Outside of the buildings and driveway located onsite the property primarily contains open space and garden areas.

Roads & Utilities

The property is served by a new onsite septic system installed as part of the required site plan improvements. Water service is provided by Des Moines Water Works. Adjacent roadways include Meredith Drive, which is classified as a minor arterial roadway connecting Beaver Avenue to the east to other arterial and local streets moving west. Meredith Drive runs along the municipal boundary between the City of Des Moines and unincorporated Polk County between Beaver Avenue to the east and Merle Hay Road (Hwy 28) to the west. The City of Des Moines is responsible for routine maintenance of this stretch of Meredith Drive in accordance with the 28-E agreement between Des Moines and Polk County. NW 51st Street is a local roadway maintained by Polk County, which provides direct access to properties north of Meredith Drive within the unincorporated neighborhoods of Lovington and Piekenbrock.

Recommendation

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
Yes. The property has an approved Conditional Use Permit allowing certain Agri-Tourism uses that are commercial in nature. This commercial element of the property triggers improvements, including landscaping, that are not required for surrounding residential properties.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
Yes. Certain Agri-Tourism uses are permitted on the property, subject to the conditions of the approved Conditional Use Permit.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
Yes. The required six (6) foot tall privacy fence along the northern and eastern property lines will meet the majority of the peripheral bufferyard screening requirements. Trees and shrubs would have a limited impact in terms of providing additional screening. The appellant has also communicated they will plant vegetables within the northern bufferyard and will be held to installing the required 28 shrubs within the western street bufferyard.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The subject property is undersized relative to accommodating the appellant's Agri-Tourism use. Therefore, there is little room to establish the required landscaping.

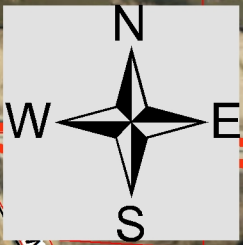
5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance, and the owners have already established several landscape areas throughout the property.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.

I 80 I 35

0 750 1,500 3,000 Feet



Urbandale

Attachment A

I8035 WB

NW Torgerson Dr

Sutton Pl

Oakwood Dr

NW Piekerbock Dr

NW 53rd Ct

NW 52nd St

NW 51st St

NW 50th St

NW 47th Ave

NW 48th St

NW Lovington Dr

Lower Beaver Rd

NW 44th St

Subject Property

Meredith Dr

Skyline Dr

Brinkwood Rd

44th Pl

Beaver Hills Dr

Bel Aire Rd

Crestmor Dr

49th St

48th St

47th St

Palm Ave

49th St

49th Pl

50th St

51st St

Twana Dr

54th St

Merle Hay Frontage Rd

Frontage Rd

Merle Hay Rd

Townsend Ave

59th St

60th St

HWY 28

61st St

PRELIMINARY - NOT FOR CONSTRUCTION

DOGPATCH URBAN GARDENS MINOR SITE PLAN

SHEET INDEX:

- C0.1 COVER/LAYOUT&UTILITY
- C1.1 DEMO & GRADING PLAN
- C2.1 LANDSCAPE PLAN

PROPERTY DESCRIPTION:
PARCEL 2016 9 BK 15913 PG 481
AN OFFICIAL PLAT IN POLK COUNTY, IA
LOT 65 & W 1/2 LOT 66 LOVINGTON

ADDRESS:
5085 MEREDITH DRIVE
DES MOINES, IOWA 50310

OWNER:
ERIC QUINER
4840 PICKERBROOK DRIVE
DES MOINES, IA 50310

- ABBREVIATIONS:
- AC ACRES
 - ASPH ASPHALT
 - BK BOOK
 - CONC CONCRETE
 - D DEEDED DISTANCE
 - EX EXISTING
 - ENCL ENCLOSURE
 - FF FINISHED FLOOR
 - FRAC FRACTIONAL
 - M MEASURED DISTANCE
 - MH MANHOLE
 - OPC ORANGE PLASTIC CAP
 - P PLATTED DISTANCE
 - PG PAGE
 - POB POINT OF BEGINNING
 - POC POINT OF COMMENCEMENT
 - PRA PREVIOUSLY RECORDED AS
 - PUE PUBLIC UTILITY EASEMENT
 - ROW RIGHT OF WAY
 - RPC RED PLASTIC CAP
 - SF SQUARE FEET
 - SAN SANITARY
 - TYP TYPICAL
 - YPC YELLOW PLASTIC CAP
 - N NORTH
 - S SOUTH
 - E EAST
 - W WEST

SITE AREA:
0.93 ACRES (40,292 SQUARE FEET) MORE OR LESS

OPEN SPACE RATIO (OSR):
MIN. REQUIRED = 0.925 AC X 60% = 0.555 ACRE OR 24,175 SF
PROPOSED = 0.714 AC OR 77.2%

FLOOR AREA RATIO (FAR):
MAX. ALLOWED = 13% X 40,292 SF = 5,238 SF
PROPOSED = 4,050 SF OR 10.1%

- UTILITY PROVIDERS:
- ELECTRIC: MID AMERICAN
 - SANITARY: ON-SITE
 - TELECOMM: CENTURYLINK
 - GAS: MID AMERICAN
 - WATER: DES MOINES WATER WORKS

- LEGEND:
- SAN SANITARY SEWER
 - ST STORM SEWER
 - W WATER LINE
 - G GAS LINE
 - UE UNDERGROUND ELECTRIC
 - OE OVERHEAD ELECTRIC
 - TELE TELEPHONE LINE
 - FIO FIBER OPTIC
 - CATV CABLE TV
 - SM STORM MANHOLE
 - CI CURB INTAKE
 - SI SURFACE INTAKE
 - FE FLARED END SECTION
 - SM SANITARY MANHOLE
 - CN CLEANOUT
 - FH FIRE HYDRANT
 - SP SPRINKLER
 - IC IRRIGATION CONTROL VALVE
 - WM WATER MANHOLE
 - WELL
 - WV WATER VALVE
 - WSO WATER SHUT OFF
 - YH YARD HYDRANT
 - EM ELECTRIC MANHOLE
 - EMR ELECTRIC METER
 - ER ELECTRIC RISER
 - EV ELECTRIC VAULT
 - PP POWER POLE
 - TP TRANSFORMER POLE
 - LP LIGHT POLE
 - EJB ELECTRIC JUNCTION BOX
 - EP ELECTRIC PANEL
 - TR TRANSFORMER
 - GL GROUND LIGHT
 - GW GUY WIRE
 - EHR ELECTRIC HANDHOLE
 - GM GAS METER
 - GV GAS VALVE
 - ACU AIR CONDITIONING UNIT
 - TRR TELEPHONE RISER
 - TV TELEPHONE VAULT
 - TM TELEPHONE MANHOLE
 - TSM TRAFFIC SIGNAL MANHOLE
 - FOR FIBER OPTIC RISER
 - FOF FIBER OPTIC FAULT
 - CR CABLE TV RISER
 - SIGN
 - DN DENOTES NUMBER OF PARKING STALLS
 - PC PROPERTY CORNER - FOUND AS NOTED
 - PLC PROPERTY CORNER - PLACED 3/4" IRON PIPE WITH YELLOW PLASTIC CAP ID #14775
 - SC SECTION CORNER - FOUND AS NOTED

GENERAL NOTES:

- ALL WORK SHALL BE DONE IN ACCORDANCE WITH SUDAS STANDARD SPECIFICATIONS AND ANY AND ALL COUNTY SUPPLEMENTAL SPECIFICATIONS. POLK COUNTY MUST BE NOTIFIED BY ALL CONTRACTORS 48 HOURS PRIOR TO COMMENCING WORK.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL UTILITIES. ANY DAMAGE TO SAID UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CURRENT O.S.H.A. CODES AND STANDARDS. NOTHING INDICATED ON THESE PLANS SHALL RELIEVE THE CONTRACTOR FROM COMPLYING WITH THE APPROPRIATE SAFETY REGULATIONS.
- ALL NECESSARY CONSTRUCTION SIGNS, BARRICADES AND OTHER TRAFFIC CONTROL DEVICES REQUIRED DURING CONSTRUCTION WILL BE FURNISHED BY THE CONTRACTOR. SIGNS, BARRICADES AND OTHER TRAFFIC CONTROL DEVICES MUST BE IN CONFORMANCE WITH THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS."
- BISHOP ENGINEERING SHALL NOT BE LIABLE FOR ANY INJURIES THAT HAPPEN ON SITE. THIS SHALL INCLUDE BUT NOT BE LIMITED TO TRENCH COLLAPSES FROM VARYING SOIL CONDITIONS OR INJURIES CAUSED BY UNDERGROUND UTILITIES INCLUDING UTILITIES THAT ARE NOT SHOWN ON PLAN.
- THE CONTRACTOR IS LIABLE FOR ALL DAMAGES TO PUBLIC OR PRIVATE PROPERTY CAUSED BY THEIR ACTION OR INACTION IN PROVIDING FOR STORM WATER FLOW DURING CONSTRUCTION. DO NOT RESTRICT FLOWS IN EXISTING DRAINAGE CHANNELS, STORM SEWER, OR FACILITIES.
- SOIL IMPORT OR EXPORT ON THIS PROJECT SHALL BE CONSIDERED INCIDENTAL AND WILL NOT BE MEASURED OR PAID FOR SEPARATELY.
- THE CONTRACTOR SHALL PROTECT ALL STRUCTURES NOT SHOWN AS REMOVALS ON THE PLANS.
- THE CONTRACTOR SHALL OBTAIN ANY AND ALL NECESSARY PERMITS PRIOR TO ANY CONSTRUCTION. CONTRACTOR SHALL WORK WITH OWNER OR OWNERS REPRESENTATIVE ON ALL REQUIRED PERMITS FROM POLK COUNTY.
- GRADING AND EROSION CONTROL SHALL BE DONE IN ACCORDANCE WITH THE APPROVED GRADING PLAN, AND IOWA DEPARTMENT OF NATURAL RESOURCES REQUIREMENTS.
- THE CONTRACTOR SHALL PICK UP ANY DEBRIS SPILLED ONTO THE ADJACENT RIGHT OF WAY OR ABUTTING PROPERTIES AS THE RESULT OF CONSTRUCTION, AT THE END OF EACH WORK DAY.
- THE CONTRACTOR IS RESPONSIBLE FOR THE PROMPT REMOVAL OF ALL MUD THAT HAS BEEN TRACKED OR WASHED UNTO ADJACENT PROPERTY OR RIGHT OF WAY UNTIL SUCH TIME THAT PERMANENT VEGETATION HAS BEEN ESTABLISHED.
- DISPOSE OF ALL EXCESS MATERIALS AND TRASH IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL REQUIREMENTS. PROVIDE WASTE AREAS OR DISPOSAL SITES FOR EXCESS MATERIALS NOT DESIRABLE FOR INCORPORATION INTO THE PROJECT.
- NO OUTDOOR REFUSE COLLECTION AREA IS PROPOSED TO BE ADDED WITH THIS PAVING PROJECT.
- FENCE HEIGHT VARIANCE APPROVED WITH CONDITIONS BY THE POLK COUNTY BOARD OF ADJUSTMENT ON JANUARY 19, 2016 AS DOCKET #162671, TO ALLOW A FENCE ENCLOSED THE SOUTHEASTERN PORTION OF THE PROPERTY UP TO 6 FEET IN HEIGHT WITHIN THE FRONT YARD SETBACK AND 8 FEET IN HEIGHT WITHIN THE SIDE OR REAR YARD SETBACK. FENCE MUST BE WOVEN WIRE OR A SIMILAR FULL TRANSPARENT COVERING (CHAIN LINK ALLOWED), AND SHALL OBSERVE A 20-FOOT SETBACK FROM THE SOUTH FRONT PROPERTY LINE PARALLEL TO MEREDITH DRIVE SO AS TO OBSERVE THE ESTABLISHED RIGHT-OF-WAY LINE.
- SIGNAGE: THE SITE IS PERMITTED A MAXIMUM OF 40 FT² OF CUMULATIVE SIGNAGE AREA, WHICH MAY BE APPLIED TO ONE (1) FREESTANDING SIGN, AND ANY WALL SIGNAGE. PRIOR TO THE INSTALLATION OF ANY SIGNAGE A PERMIT SHALL BE OBTAINED FROM POLK COUNTY.

PAVING NOTES:

- THE PAVING/GRADING CONTRACTOR SHALL BACKFILL THE PAVING SLAB AND FINE GRADE THE RIGHT OF WAY AS SOON AFTER THE PAVING AS POSSIBLE. ALL AREAS SHALL BE SEEDED IN ACCORDANCE WITH POLK COUNTY STANDARD SPECIFICATIONS AND THE CURRENT VERSION OF SUDAS.
- SEE DETAILS FOR ALL PAVEMENT THICKNESS.
- ALL WALKS, PARKING LOTS, HANDICAP PARKING, RAMPS, ETC. SHALL COMPLY WITH ALL A.D.A. AND COUNTY CODES. HANDICAP PARKING SIGNAGE IS REQUIRED FOR ALL HANDICAP STALLS AND SHALL BE CONSIDERED INCIDENTAL. IN EVENT OF A DISCREPANCY BETWEEN THE PLANS AND THE A.D.A./COUNTY CODES THE A.D.A./COUNTY CODES SHALL GOVERN. CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING A.D.A. CODES ARE MET.

UTILITY NOTES:

- THE CONTRACTOR SHALL COORDINATE THE ADJUSTMENT OF ANY AND ALL EXISTING AND PROPOSED UTILITIES TO PROPOSED GRADES. EXISTING UTILITIES SHALL BE RAISED OR LOWERED IN ACCORDANCE WITH THE UTILITY OWNER REQUIREMENTS. ANY NECESSARY ADJUSTMENTS SHALL BE CONSIDERED INCIDENTAL TO CONSTRUCTION.
- ACTIVE EXISTING FIELD TILES ENCOUNTERED DURING CONSTRUCTION SHALL BE REPAIRED, REROUTED, OR CONNECTED TO PUBLIC OR PRIVATE STORM SEWER.
- SANITARY BIOFILTER SYSTEM SHOWN FOR LOCATION ONLY ON PLAN, DESIGN AND PERMITTING TO BE BY OWNER/OTHERS.

UTILITY CONFLICT NOTES:

- UTILITY CONFLICTS MAY EXIST ACROSS THE SITE WITH NEW UTILITIES, GRADING, PAVING ETC. MOST UTILITY CONFLICTS HAVE BEEN CALLED OUT FOR CONTRACTOR CONVENIENCE.
- CONTRACTOR IS RESPONSIBLE FOR ALL UTILITY CONFLICTS THAT ARE EITHER CALLED OUT ON THE PLANS OR THAT CAN BE SEEN ON THE PLANS BETWEEN AND EXISTING UTILITY AND PROPOSED CONSTRUCTION.

LEGEND:

- PROPOSED PCC (7" FOR DRIVEWAY IN ROW / 6" PARKING / 4" WALKS)
- PROPOSED GRAVEL
- ROOF DRAIN

DESCRIPTION OF PROPOSED USE:

AGRICULTURAL TOURISM AND SALES OF LOCAL PRODUCE AND GOODS (AS APPROVED VIA CONDITIONAL USE PERMIT BY THE POLK COUNTY BOARD OF ADJUSTMENT ON MARCH 20, 2017 AS DOCKET #175623. SEE CONDITIONAL USE PERMIT FILE FOR CONDITIONS OF APPROVAL.)

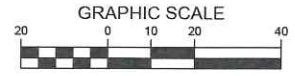
ZONING:
LDR - LOW DENSITY RESIDENTIAL DISTRICT

BUILDING SETBACKS:
FRONT- THIRTY FIVE (35) FEET (STREET)
SIDE- TEN (10) FEET
REAR- THIRTY FIVE (35) FEET

PARKING REQUIREMENTS:
RETAIL: 4 SPOTS/ 1000 SF
* 576 SF = 3 SPOTS

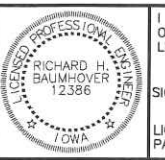
REQUIRED:
3 STALLS INCLUDING ONE HANDICAPPED

PROVIDED:
2 REGULAR STALLS
1 HANDICAPPED
3 TOTAL SPACES PROVIDED

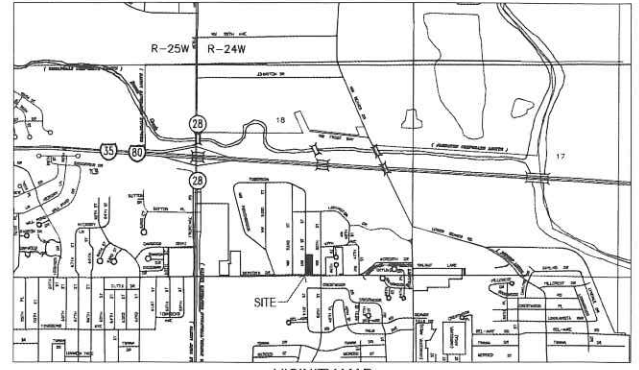


I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF IOWA.

SIGNED: RICHARD H. BAUMHOVER, P.E. 12386 DATE: _____
LICENSE RENEWAL DATE: DEC. 31, 2017
PAGES OR SHEETS COVERED BY THIS SEAL: C0.1-C2.1



UTILITY NOTE:
THE LOCATION OF THE UTILITIES INDICATED ON THE PLANS HAVE BEEN TAKEN FROM THE FIELD SURVEY. EXISTING PUBLIC RECORDS, AND PLANS PROVIDED BY OTHERS. SURFACE UTILITY LOCATIONS HAVE BEEN FIELD LOCATED BY BISHOP ENGINEERING, UNLESS OTHERWISE NOTED. ALL UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE LOCATIONS ONLY. BISHOP ENGINEERING DOES NOT GUARANTEE THE UNDERGROUND LOCATION OF ANY UTILITIES SHOWN. IT SHALL BE THE DUTY OF THE CONTRACTOR TO DETERMINE THE LOCATION AND DEPTH OF ANY UNDERGROUND UTILITIES SHOWN AND IF ANY ADDITIONAL UTILITIES, OTHER THAN THOSE SHOWN ON THE PLANS, MAY BE PRESENT. A REQUEST WAS MADE TO IOWA ONE CALL FOR UTILITY PROVIDERS TO VERIFY, LOCATE, AND MARK THEIR UTILITIES IN THE FIELD.



Bishop Engineering
"Planning Your Successful Development"
3501 104th Street
Des Moines, Iowa 50322-3825
Phone: (515) 276-0467 Fax: (515) 276-0217
Civil Engineering & Land Surveying
Established 1959

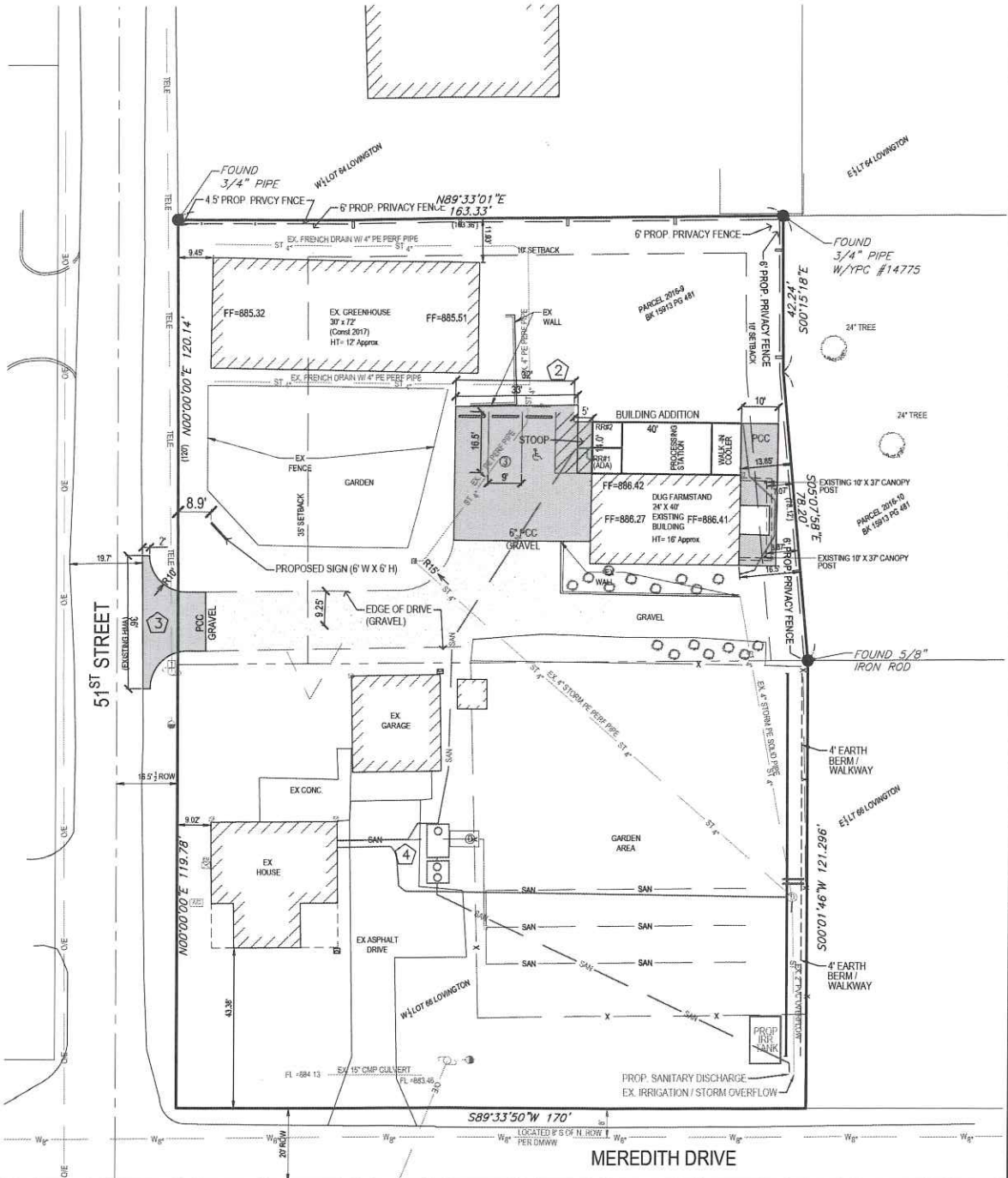
DOGPATCH URBAN GARDENS
5085 MEREDITH DRIVE, DES MOINES

COVER AND LAYOUT

REFERENCE NUMBER:
DRAWN BY: M.J.E.
CHECKED BY: RB
REVISION DATE:
12-1-17
1-5-18
2-5-18
2-15-18

PROJECT NUMBER:
170421

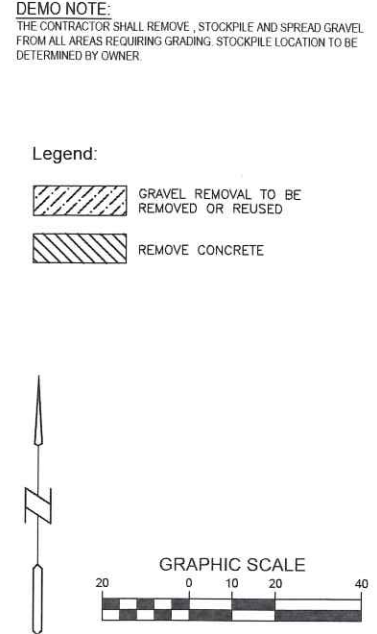
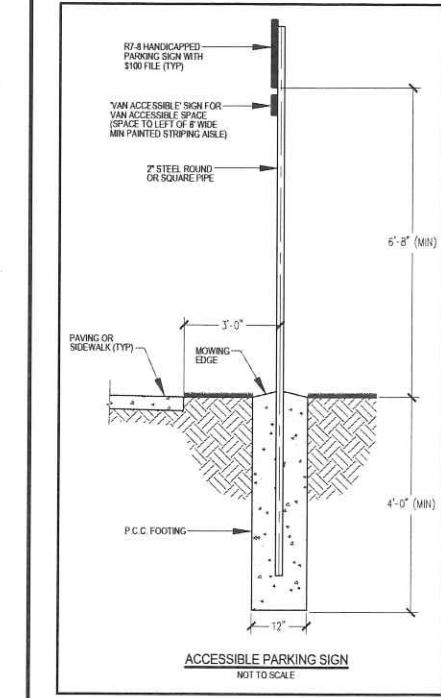
SHEET NUMBER:
C0.1



LAYOUT PLAN

Attachment B

PRELIMINARY - NOT FOR CONSTRUCTION



DEMO NOTE:
THE CONTRACTOR SHALL REMOVE, STOCKPILE AND SPREAD GRAVEL FROM ALL AREAS REQUIRING GRADING. STOCKPILE LOCATION TO BE DETERMINED BY OWNER.

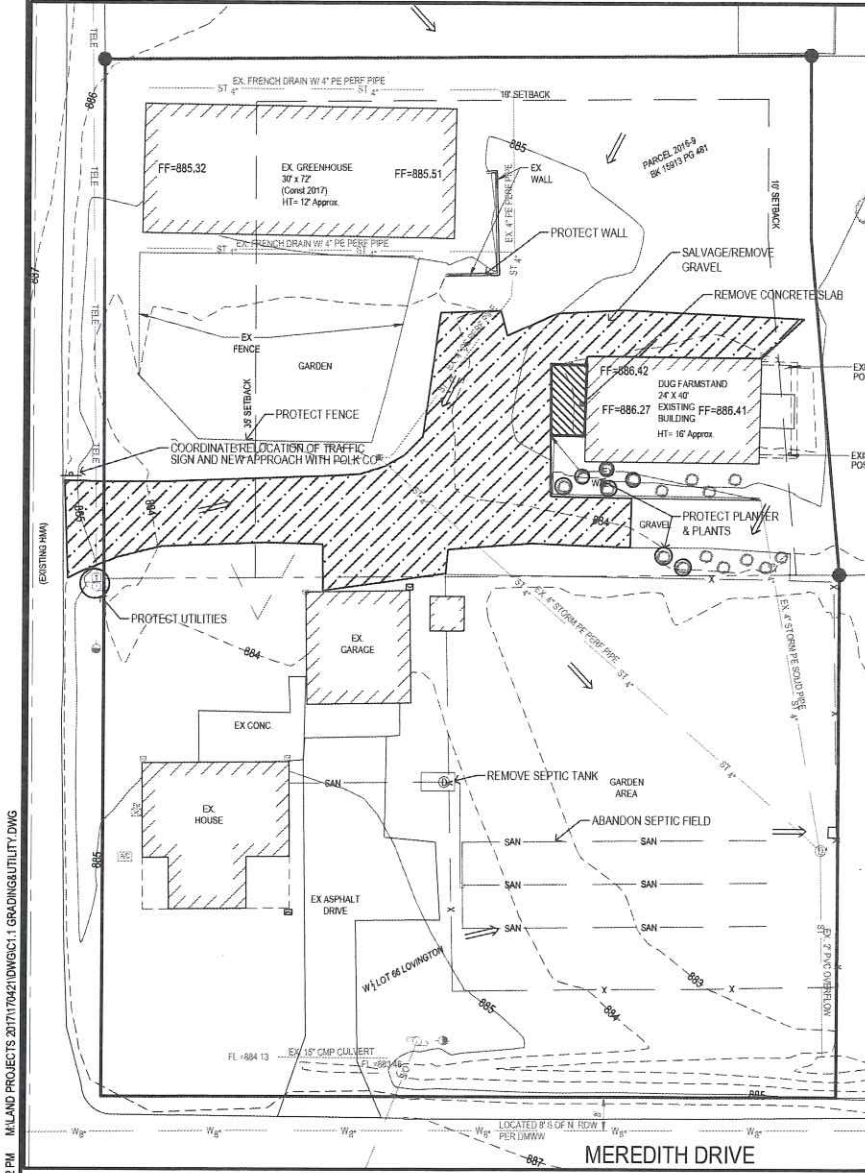
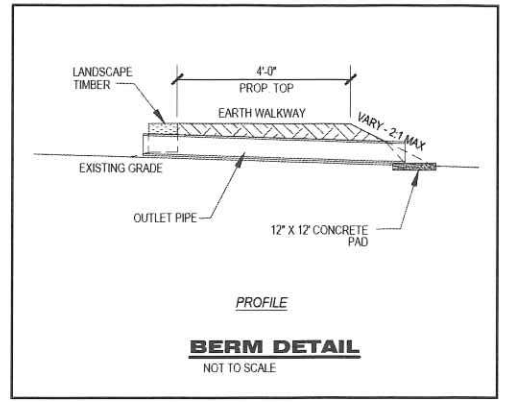
TOPSOIL NOTES:

- STRIP AND STOCKPILE THE TOP 6" OF SOIL ON ALL DISTURBED AREAS.
- RESURFACE TOPSOIL TO A MINIMUM DEPTH OF 6" ON ALL GREEN (NON PAVED) AREAS. IMPORT TOPSOIL AS NECESSARY TO ACHIEVE A MINIMUM DEPTH OF 6".
- TOPSOIL SHALL BE FREE OF ALL ROCK AND DEBRIS LARGER THAN 3/4" IN SIZE.
- TOPSOIL IS DEFINED AS: FERTILE, FRIABLE LOAM, CAPABLE OF SUSTAINING VIGOROUS PLANT GROWTH, FROM WELL DRAINED SITE FREE FROM FLOODING, NOT IN FROZEN OR MUDDY CONDITIONS, REASONABLE FREE FROM SUBSOIL, CLAY LUMPS, ROOTS, GRASS, WEEDS, STONES LARGER THAN 3/4 INCH IN DIAMETER, AND FOREIGN MATTER; ACIDITY RANGE (PH) OF 5.5 TO 7.5, CONTAINING MINIMUM 4 PERCENT AND MAXIMUM 20 PERCENT ORGANIC MATTER.

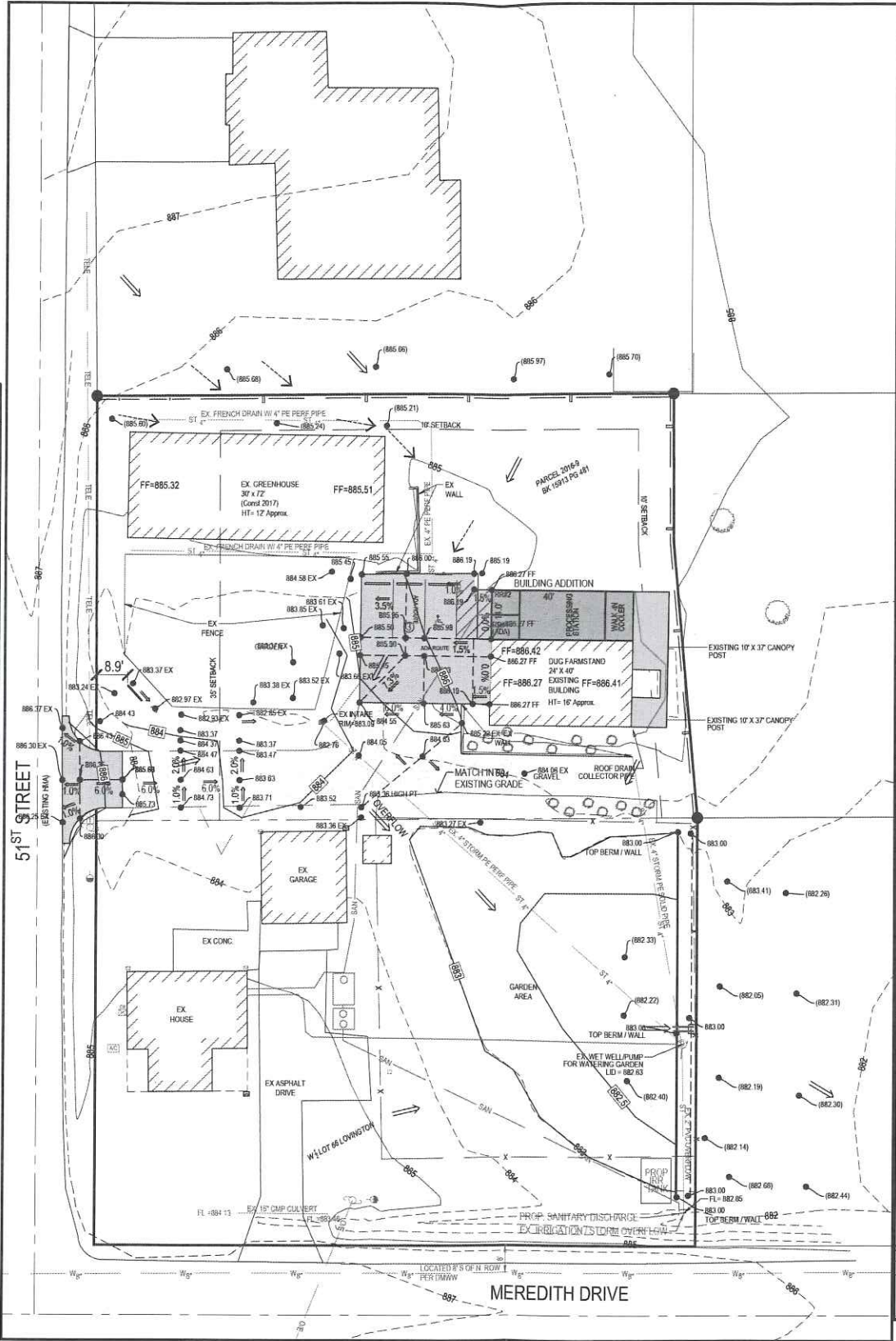
GRADING LEGEND:

- EXISTING CONTOUR: -150-
- PROPOSED CONTOUR: 150
- EXISTING GROUND ELEVATION: (150.50)
- FINISHED GROUND ELEVATION: 150.50
- TOP OF CURB ELEVATION: 150.501/C
- GUTTER ELEVATION: 150.50/G
- TOP OF WALL ELEVATION: 150.501/W
- BOTTOM OF WALL ELEVATION: 150.50B/W

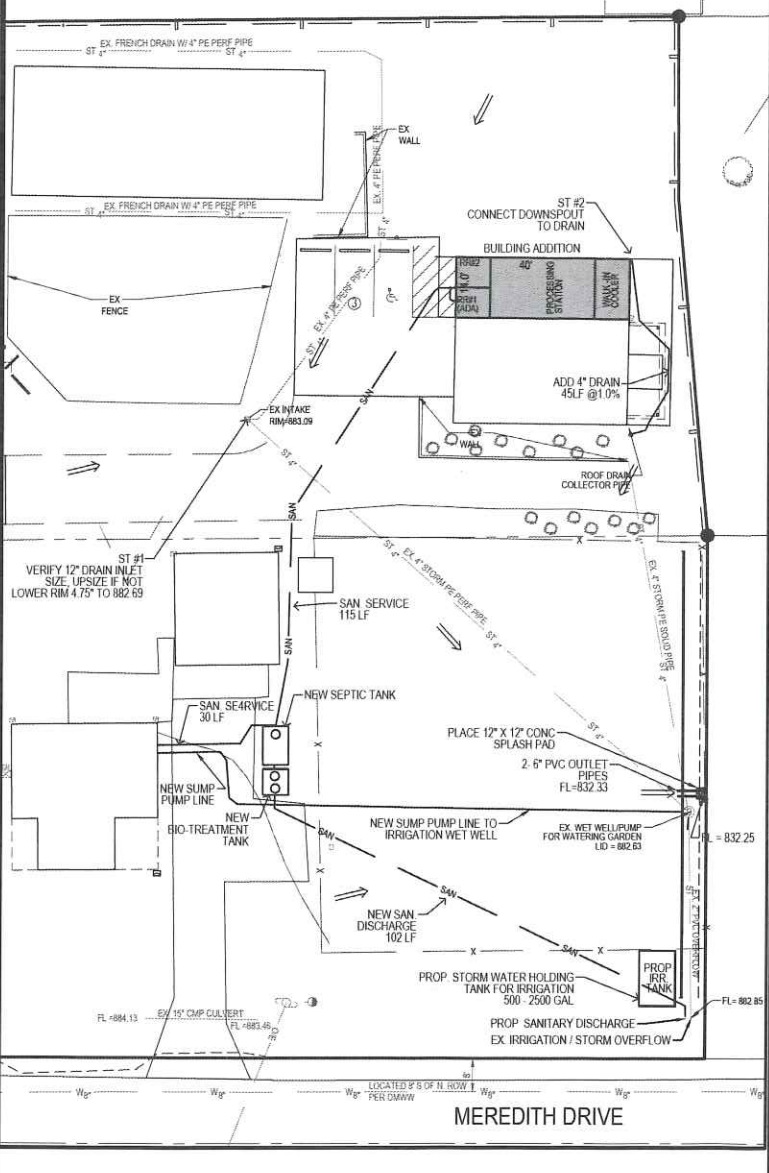
NOTE: WALL ELEVATIONS SHOWN ON PLAN ARE FINISHED GROUND GRADES AT THE TOP AND BOTTOM OF THE WALL.



DEMO PLAN



GRADING PLAN



UTILITY PLAN

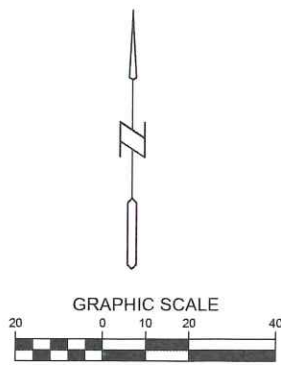
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Established 1959

Civil Engineering & Land Surveying

DOGPATCH URBAN GARDENS
5085 MEREDITH DRIVE, DES MOINES
DEMO & GRADING/UTILITY PLAN

| | |
|-------------------|--|
| REFERENCE NUMBER: | |
| DRAWN BY: | M.J.E. |
| CHECKED BY: | RB |
| REVISION DATE: | 12-1-17 1-5-18 2-5-18 2-15-18 |
| PROJECT NUMBER: | 170421 |
| SHEET NUMBER: | C1.1 |



LANDSCAPE REQUIREMENTS:

STREET BUFFER YARD - (LIGHT OPACITY REQUIRED):
 10' BUFFER YARD & 120' LENGTH
 (120/100) x 1.6 = 1.92 PLANT UNITS
 PER OPTION #3 = 4 TREES + 14 SHRUBS
 SUBSTITUTE 50% TREES = 2 TREES + 28 SHRUBS

PERIPHERAL BUFFER YARD, NORTH LOT LINE - (MEDIUM OPACITY REQUIRED WEST 1/2):
 10' BUFFER YARD & 25' LENGTH
 (25/100) x 5.4 = 1.35 PLANT UNITS
 PER OPTION #3 = 3 TREES + 10 SHRUBS
 SUBSTITUTE TREES = 5 TREES
AND
 10' BUFFER YARD & 47' LENGTH & 6' PRIVACY FENCE
 (47/100) x 1.1 = 0.52 PLANT UNITS
 PER OPTION #3 = 2 TREES + 4 SHRUBS
 SUBSTITUTE TREES = 3 TREES

PERIPHERAL BUFFER YARD, NORTH LOT LINE - (MEDIUM OPACITY REQUIRED EAST 1/2):
 50' BUFFER YARD & 83' LENGTH & 6' PRIVACY FENCE
 (83/100) x 0 = 0 PLANT UNITS

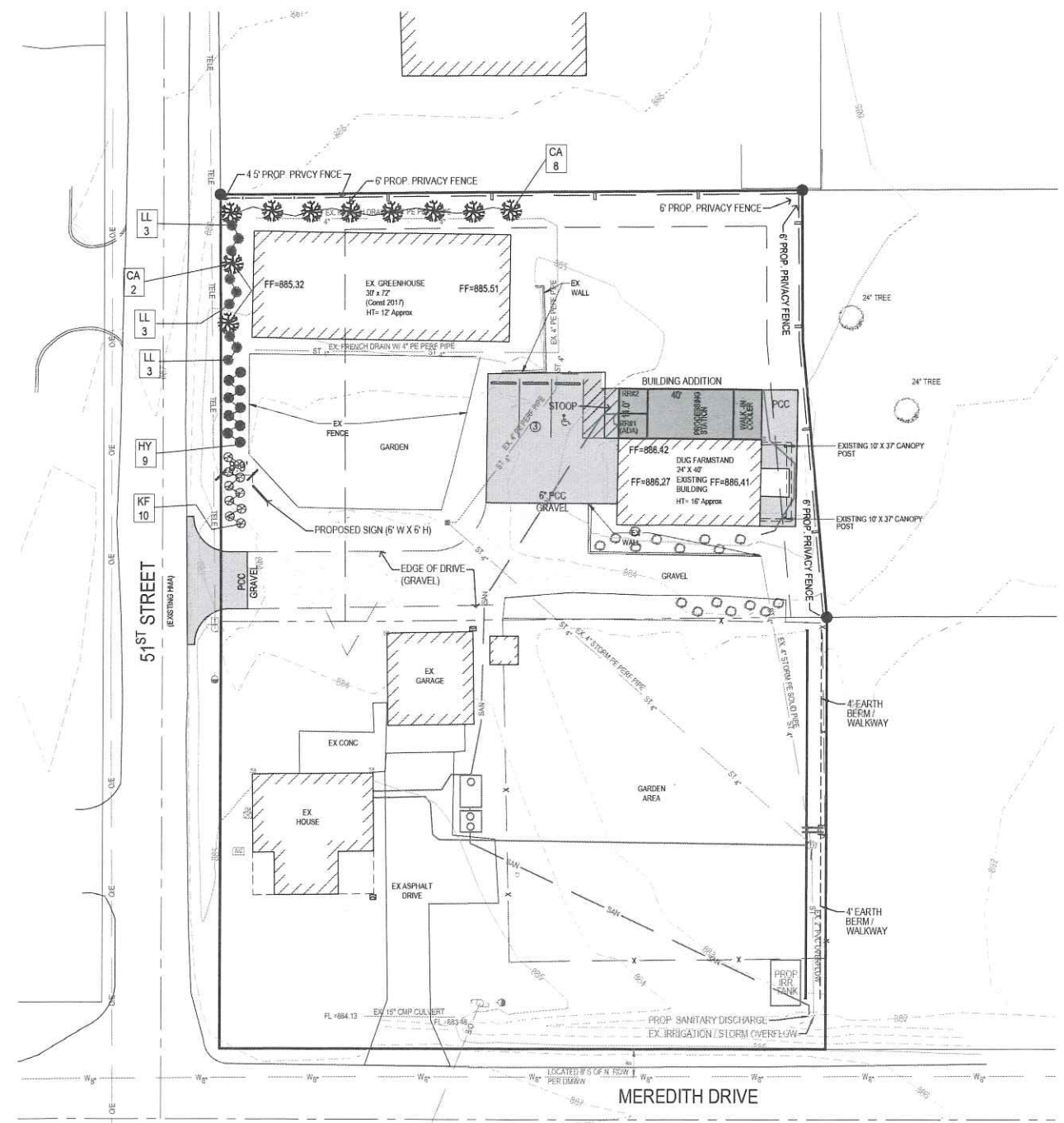
PERIPHERAL BUFFER YARD, EAST LOT LINE - (MEDIUM OPACITY REQUIRED SOUTH 1/2):
 10' BUFFER YARD & 65' LENGTH & 6' PRIVACY FENCE
 (65/100) x 1.1 = 0.72 PLANT UNITS
 PER OPTION #3 = 2 TREES + 6 SHRUBS
 (APPLICANT WILL ASK FOR VARIANCE FOR THIS REQUIREMENT)

PERIPHERAL BUFFER YARD, EAST LOT LINE - (MEDIUM OPACITY REQUIRED NORTH 1/2):
 80' BUFFER YARD & 55' LENGTH & 6' PRIVACY FENCE
 (55/100) x 0 = 0 PLANT UNITS

TOTAL REQUIRED = 12 TREES + 34 SHRUBS
 (APPLICANT WILL ASK FOR VARIANCE TO PROVIDE 10 TREES + 28 SHRUBS)

PLANTING SCHEDULE

| KEY | QUANTITY | NAME | SIZE |
|-----|----------|---------------------|----------|
| CA | 10 | COLUMNAR APPLE | 1.5" CAL |
| HY | 9 | HYDRANGEAS | 2' HIGH |
| LL | 9 | LILAC | 2' HIGH |
| KF | 10 | KARL FORESTER GRASS | 2' HIGH |



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DOGPATCH URBAN GARDENS
 5085 MEREDITH DRIVE, DES MOINES
LANDSCAPE PLAN

| |
|--|
| REFERENCE NUMBER: |
| DRAWN BY: M.J.E. |
| CHECKED BY: RB |
| REVISION DATE: 12-1-17 1-5-18 2-5-18 2-15-18 |
| PROJECT NUMBER: 170421 |
| SHEET NUMBER: C2.1 |

Docket Number: 18/7579

Appellants: Wild Paws, LLC / Megan Rude (prospective tenant/lessee), 3211 E. 52nd Street, Des Moines, IA 50314, and Halbrook Rentals, LLC, 4807 SE Rio Ct, Ankeny, IA 50021 (property owner), represented by Eric Cannon with Snyder & Associates, 2727 SW Snyder Blvd, Ankeny IA 50023

Appeal: The appellants request three (3) separate Variances in order to accommodate a proposed Animal Services use of a dog daycare and boarding facility. Specifically, the request is for the following: A setback Variance to the separation requirements for an outdoor exercise area and structure sheltering animals, a Variance to the required parking standard for a personal services use, and a curbing Variance for the drive aisle.

Surrounding Area / Land Uses

The subject property is located at 7050 NE 14th Street, Ankeny, and is legally described as the northerly 107.51 feet of the south 297.51 feet as measured on the west line of Lot 3 of Crocker Acres, Section 35 of Crocker Township. The subject property is approximately 26,229 square feet (0.60 acres) in size, and is zoned “GC” General Commercial District. The property is rectangular shaped, having approximately 107.51 feet of lot width and frontage onto NE 14th Street to the east, and approximately 244 feet of lot depth. Surrounding properties are zoned “GC” General Commercial District and primarily developed with single-family residences along with some limited retail commercial uses. The owner of the subject property, Larry Halbrook, owns several other properties in the area, including the properties located directly adjacent to the north and south of the subject property. The adjacent property to the north at 7074 NE 14th Street is zoned General Commercial and contains a single-family dwelling. The adjacent property to the south at 7040 NE 14th Street is currently being developed as a mixed-use residential and commercial node, known as Carney Town Center. Further south there is a local bar as well as a local restaurant both located on the north side of the intersection of NE 14th Street and NE 70th Avenue. South of NE 70th Avenue there is a mix of continued General Commercial and Light Industrial zoning and land uses. Directly north of the subject property on either side of NE 14th Street all properties are developed with single-family homes and zoned “GC” General Commercial District. Immediately to the west of the subject property is the single-family development of Willow Run within the City of Ankeny. The lots are zoned residentially, and the parcels nearest the subject property have homes currently under construction.

Background

The property contains an existing commercial building, which was constructed as two separate buildings. There is an approximately 3,200 square foot front section nearest NE 14th Street which County records indicate was constructed in 1956, and there is an approximately 3,600 square foot rear section which County records indicate was constructed in 1981. Wild Paws, LLC is leasing the front 3,200 square foot section for a proposed Animal Services use of a dog daycare and boarding facility. The rear 3,600 square foot section of building is currently leased by a property maintenance company for storage/warehousing, which Polk County has allowed as a continuation of a long-standing non-conforming light industrial warehousing use on the site. The rear of the property is also utilized as a gravel storage yard for the property maintenance tenant, including a composite screening fence. The subject property contains a paved entrance onto NE 14th Street (Hwy 69), and also contains some onsite paved areas for the drive aisle and limited parking. The majority of the onsite drive aisle and circulation area is unimproved.

The Polk County Zoning Ordinance contains specific regulations for Animal Services uses in order to limit their impact upon neighboring properties. Specifically, the regulations are intended to limit the impact upon existing and future residential and office uses in close proximity. The regulations require that any outdoor exercise areas or structures sheltering animals be a minimum of 200 feet from all residential zoning district boundaries, existing dwellings, or buildings containing an office, as well as require any fence for an outdoor exercise area to be located a minimum of 15 feet from a property line. The parking standard most applicable to an Animal Services use is under the Off-Street Parking and Loading category of Personal Services, requiring roughly one (1) space per every 200 hundred square feet of gross floor area, plus one (1) space per employee. The Ordinance also requires all commercial developments to pave and curb all drives, parking, loading and display areas.

All three (3) of the Variances requested must be approved in order to allow the proposed Animal Services use. If approved, the owners will be required to submit an engineered site plan to address all required site improvements, including landscaping, stormwater detention, building code requirements, etc.

Staff mailed out 17 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received zero (0) responses regarding this Appeal.

Summary of Request

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 4: Use Categories and Standards, Section 4(V.2)*, includes the following use standard for Animal Services Uses, “Any outside exercising areas or structures which shelter animals, that do not complete conceal animal noises, shall be at least two-hundred (200) feet from all residential zoning district boundary or existing dwelling unit(s) or a building that contains an office. No fence for an outside exercise area shall be closer than fifteen (15) feet to a property line. No exercise area shall be located in the front yard of a property.” The Appeal requests a Variance to this standard to allow the existing building and a proposed outdoor exercise area to be located less than the required 200 feet from nearby existing dwelling units, an adjacent residential zoning district, and from a future commercial building with future office space adjacent to the south. In addition, the appellants request the proposed outdoor exercise area be permitted at a setback of five (5) feet from the northern property line, in lieu of the required 15 feet of setback.

The appellant’s concept plan is included at the end of this report as *Attachment A*. The exhibit demonstrates that the 3,200 square foot front half of the building, as well as the proposed “dog run” to be located on the north side of the building, do not meet the required 200 feet of separation from adjacent land uses. The adjacent property to the north at 7074 NE 14th Street and the property to the east at 7075 NE 14th Street are both less than the required 200 feet of separation. Also, the adjacent residential zoning district to the west, which includes the Willow Run development within the City of Ankeny, and the adjacent commercial development to the south are both less than the required 200 feet of separation. The concept plan also shows the proposed five (5) foot setback from the north property line for the outdoor exercise area. The Appeal lists the following rationales for approving this Variance: The property owner is the titleholder for both the adjacent residential property to the north and the adjacent commercial property to the south; the dwelling unit to the

east is separated by a major highway (NE 14th Street / Hwy 69); and, that while the residential zoning boundary to the west is under the required 200 feet, any dwelling is over 200 feet away.

Article 13, Division 1, Section 2, C.7 of the Polk County Zoning Ordinance requires off-street parking be provided for Personal Services uses at a rate of one (1) space per 200 square feet of first floor gross floor area, plus one (1) space per 300 square feet of any additional floor area for customer service, plus one (1) space per employee on the largest work shift. The appellants request a Variance to this standard to provide a total of eight (8) parking stalls based on a standard of one (1) space per 400 square feet of gross floor area for the proposed tenant space of 3,200 square feet. The attached concept plan (*Exhibit A*) shows adequate space for exactly eight (8) parking stalls and an aisle width that meets or exceeds the minimum standard of 24 feet for vehicle maneuvering. The Appeal states that the County's Ordinance is lacking a true standard for a dog daycare business, and cites the City of Ankeny's standard for such uses as one (1) space per 400 square feet.

Article 15: Construction Standard of the Polk County Zoning Ordinance states in part, "All developments, except conventional single-family and uses which have an average daily traffic count fewer than forty-nine (49) vehicles in the AG, AT, and OS Districts, are required to pave their drives, parking, loading and display areas. Curbs and/or wheel stops are required in parking areas and curbs are required in paved drive areas. The approach, drive and parking areas for nonresidential uses shall meet a minimum thickness as identified in SUDAS – current edition." The appellants request a Variance to this standard to allow for no curbing along the south side of the interior drive aisle. The attached concept plan (*Exhibit A*) shows existing and proposed asphalt surfacing for the drive aisle, without curbing along the southern edge/property line. The Appeal cites the existing drainage pattern of the property and the fact that the owner also owns the adjacent property to the south as rationales for approving this Variance. The western half of the drive aisle serving the the 3,600 square foot separate tenant space and outdoor storage area is considered legal, non-conforming and may remain unimproved (gravel with no curbing).

Natural Resources

The subject property contains no floodplain, wetlands or other environmental hazards or features. The property is relatively flat, and is largely covered by the existing buildings, drive aisle, parking areas, and outdoor storage space.

Roads & Utilities

The property has frontage to the east onto NE 14th Street (Hwy 69), which is classified as major arterial roadway. The Iowa DOT will be widening NE 14th Street in the next several years. The preliminary construction plans for the widening project show that an additional ten (10) feet of permanent easement will be acquired along the frontage of the subject property by the DOT. This will eliminate the current paved area located directly east of the building, however it does not appear to impact the building itself. The attached concept plan (*Exhibit A*) demonstrates that the proposed eight (8) parking stalls for the Animal Services use are located further west on the property and outside of this future acquisition area. Water service is provided by Des Moines Water Works. There is no record of any existing onsite septic system. However, the appellant's engineer will be required to verify this and the owner abandon any existing system through a future site plan process. In the future, the property will be served by City of Ankeny sanitary sewer via an agreement between the property owner and the City.

Recommendation

Variance Request #1: A setback Variance to the 200-foot separation requirement for an outdoor exercise area and structure sheltering animals from all residential zoning district boundary or existing dwelling unit(s) or a building that contains an office, and to the 15-foot setback requirement for a fenced outdoor animal exercise area from a property line.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
Yes. The subject property is undersized compared to many surrounding commercial properties, resulting in greater difficulty in terms of meeting the commercial site requirements. Also, the property has historically been occupied by non-conforming uses which have made no improvements. These non-conforming uses predate the current ownership of the property.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
Yes. The proposed Animal Services use of a dog daycare and boarding facility is a permitted use in the district, subject to meeting the required use standards.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
No. Staff is supportive of the portion of the request to allow the proposed outdoor exercise area to be five (5) feet from the northern property line, in lieu of the 15 feet required, given that the ownership of the north property is the same as the subject property. Staff is further supportive of the portion of the request for the less than 200 feet of separation to the two (2) nearest residential dwellings, given the same ownership for the residence to the north and the separation by Highway 69 for the residence to the east. However, staff is not supportive of the portion of the request to allow the building and proposed exercise area to be less than 200 feet from the nearest residential zoning district to the west. While the future dwellings may be over 200 feet away, the rear yards of these properties are well within the 200 feet of separation. Furthermore, the closest dwellings are still under construction and owned by the developer/homebuilder. Future owners have an expectation that these properties will be adequately separated from potentially nuisance land uses.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. Adjacent land uses and zoning districts were well established or under development prior to this Appeal.

- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmentally sensitive areas of the property are anticipated to be impacted by this proposal.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends denial of the requested variance.

Variance Request #2: A Variance to the required parking standard for a Personal Services use, to allow for the application of a parking standard of one (1) space per 400 square feet of gross floor area, thereby requiring a minimum of eight (8) spaces be provided for the proposed tenant space of 3,200 square feet.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?

Yes. The subject property is undersized compared to many surrounding commercial properties, resulting in greater difficulty in terms of meeting the commercial site requirements, such as parking.

- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)

Yes. The proposed Animal Services use of a dog daycare and boarding facility is a permitted use in the district, subject to meeting the required use standards.

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. The reduction in the amount of parking will not adversely impact adjacent properties.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The property has historically been occupied by non-conforming uses which have made no improvements, including adequate parking. These non-conforming uses predate the current ownership of the property.

- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmentally sensitive areas of the property are anticipated to be impacted by this proposal.

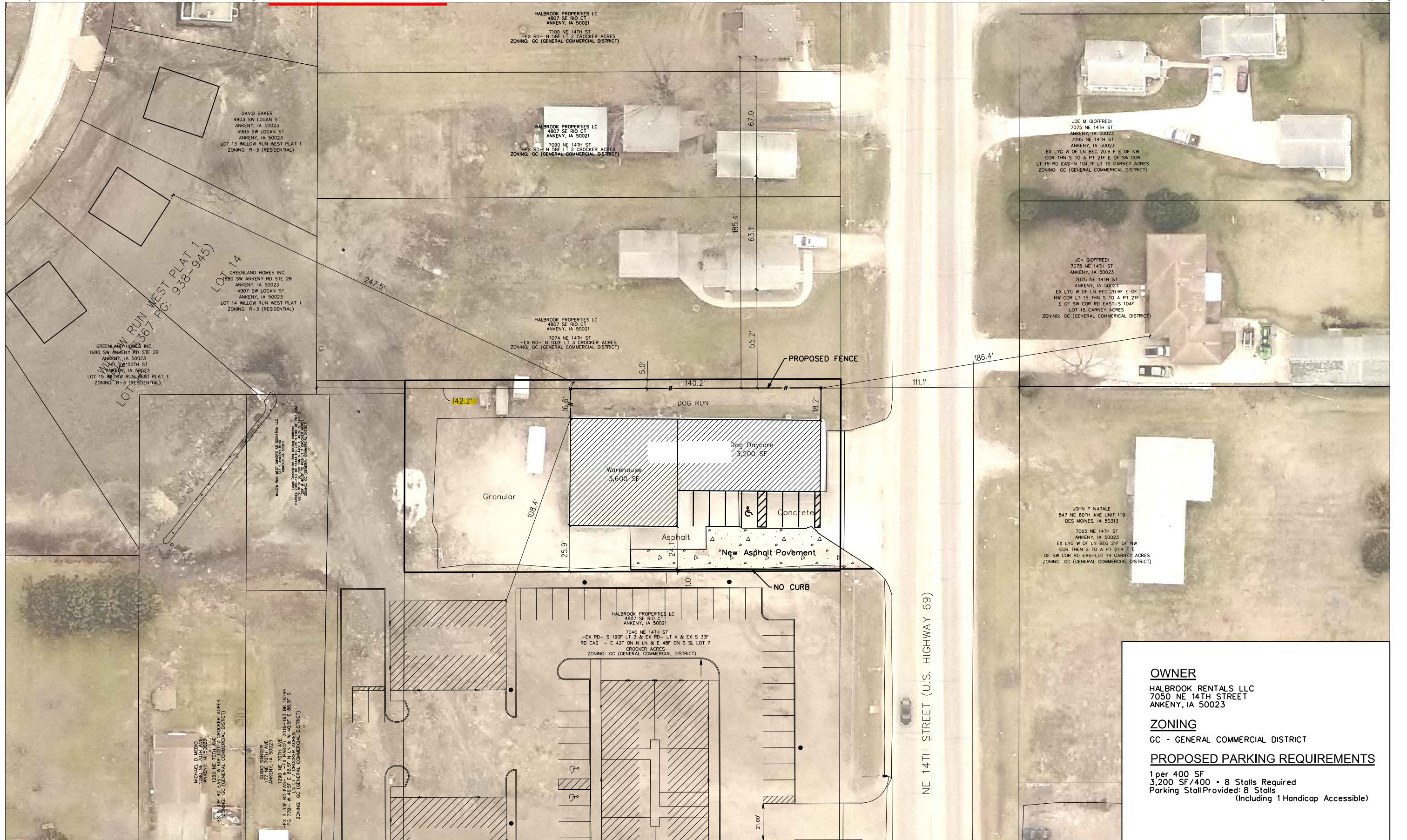
The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.

Variance Request #3: Paving and curbing Variance to allow for no curbing along the south side of the interior drive aisle.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
Yes. The drainage pattern of the area is an existing site condition which is better served without curbing along the southern portion of the interior drive aisle.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
Yes. The proposed Animal Services use of a dog daycare and boarding facility is a permitted use in the district, subject to meeting the required use standards.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
Yes. Stormwater will function more appropriately without the required curbing, and adjacent properties will not be negatively impacted by the lack of curbing. Curbing or wheel stops will still be required for the proposed eight (8) parking spaces.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
Yes. The property has historically been occupied by non-conforming uses which have made no improvements, including adequate interior access improvements to the driveway. These non-conforming uses predate the current ownership of the property.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?
Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmentally sensitive areas of the property are anticipated to be impacted by this proposal.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.



Appeal: Requesting a side yard setback Variance to reduce the 15-foot required side setback to approximately 13-feet to allow the two existing parcels to be subdivided to create a total of three (3) lots and retain the existing house. The Variance is being requested in order to meet the required lot width for each of the three (3) proposed lots and to retain the existing house in its current location.

Appeal Given: “The existing lot is approximately 87,120 sq feet (2.00 acres). The zoning of the site allows for 40,000 sq foot lots with 140 foot of frontage. The existing house is located in such a way that only 13 feet will exist from the south side of the house to the proposed future property line. The variance will allow for this property to be divided into 3 parcels all of which will have a minimum lot frontage of 140 feet.”

Background

The subject property is zoned “RR” Rural Residential District and is legally described as a Part of the SE¼ SW¼ of Section 29, Crocker Township. The subject property is located at the northwest corner of the NW 37th Street and Horseshoe Road intersection and contains two separate parcels on approximately 3.82 acres of land. The existing house was constructed in 1952 and the current owner acquired the property in 2013.

The proposed subdivision of the two existing parcels would create a southern property line located 13-feet from the southern edge of the existing house rather than the required 15-foot setback. The two existing parcels currently have a combined approximately 440 feet of frontage adjacent to NW 37th Street and approximately 817 feet of frontage adjacent to Horseshoe Road. The properties adjacent to the east of the subject property are single-family residential properties and are also zoned "RR" Rural Residential District which were created through a subdivision in 1995. The property adjacent to the north is also zoned “RR” Rural Residential District and has an existing single-family residence. The properties across Horseshoe Road to the south, west and northwest are owned by the U.S. Army Corps of Engineers and are zoned “OS” Open Space District.

One response in support of the variance has been received to-date regarding this request.

Summary of Request

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 2, Table 6.1 Table of Single-Family Bulk Standards*, establishes the required setback distances for single-family dwellings in all zoning districts. The standards for the “RR” Rural Residential District includes a 15-foot required side yard setback for single-family dwellings. The Appellant requests a two (2)-foot Variance to reduce the required side yard setback from 15-feet to 13-feet to allow the two existing parcels to be subdivided to create a total of three (3) lots and retain the existing house. The proposed three (3) lot subdivision would establish a new side yard setback for the existing dwelling and as proposed would meet a 13-foot side setback, in lieu of the required 15-feet, from the southern, proposed side property line. See *Exhibit A* attached to this report for the location of the subject properties included in the requested variance and see *Exhibit B* for the site plan submitted with the application.

Natural Resources

The grade of the subject property varies with a low point of 910-feet in the northeastern portion of the northern parcel and a high elevation point of 920-feet in the central portion of the northern parcel and northcentral portion of the southern parcel. The existing house is located at an elevation point of

920-feet. There are no environmental hazards, and the property is not within the 100-year floodplain. A great majority of the property is covered by woodlands. Future development of the property is subject to Article 7, Section 4, "Natural Resource Protection, Woodlands" of the Polk County Zoning Code, which would require a maximum of 75 percent of the existing woodlands to be preserved or mitigation on the property. The surrounding properties to the north, southeast and east are all utilized as residential properties. Properties to the south and west are owned by the U.S. Army Corps of Engineers and utilized as public parkland.

Roads/Utilities

The property is located northwest of the intersection of Horseshoe Road and NW 37th Street. NW 37th Street is a paved two-lane County maintained collector street. Horseshoe Road is a paved two-lane private road owned and maintained by the U.S. Army Corps of Engineers. The Saylorville Lake Visitor's Center is located to the northwest of the subject properties. Water service is provided by Des Moines Water Works and the property is serviced by an individual septic system.

Recommendation

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?

Yes. The two existing parcels have enough frontage and square footage to create a third lot however, the location of the existing house creates limitations on where the proposed property lines can be established. The property realignment for the creation of the third lot requires the Variance to allow for the lots to meet the minimum frontage requirements for the zoning district and retain the existing house in its current location.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)

Yes. Subdivision for the creation of single-family residential lots is permitted within the district if all bulk standards can be met. The property can meet all of the bulk standards however, to keep the existing home it requires a Variance from the southern side-yard setback. The proposed southern property line would not impact the surrounding properties in the same vicinity.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

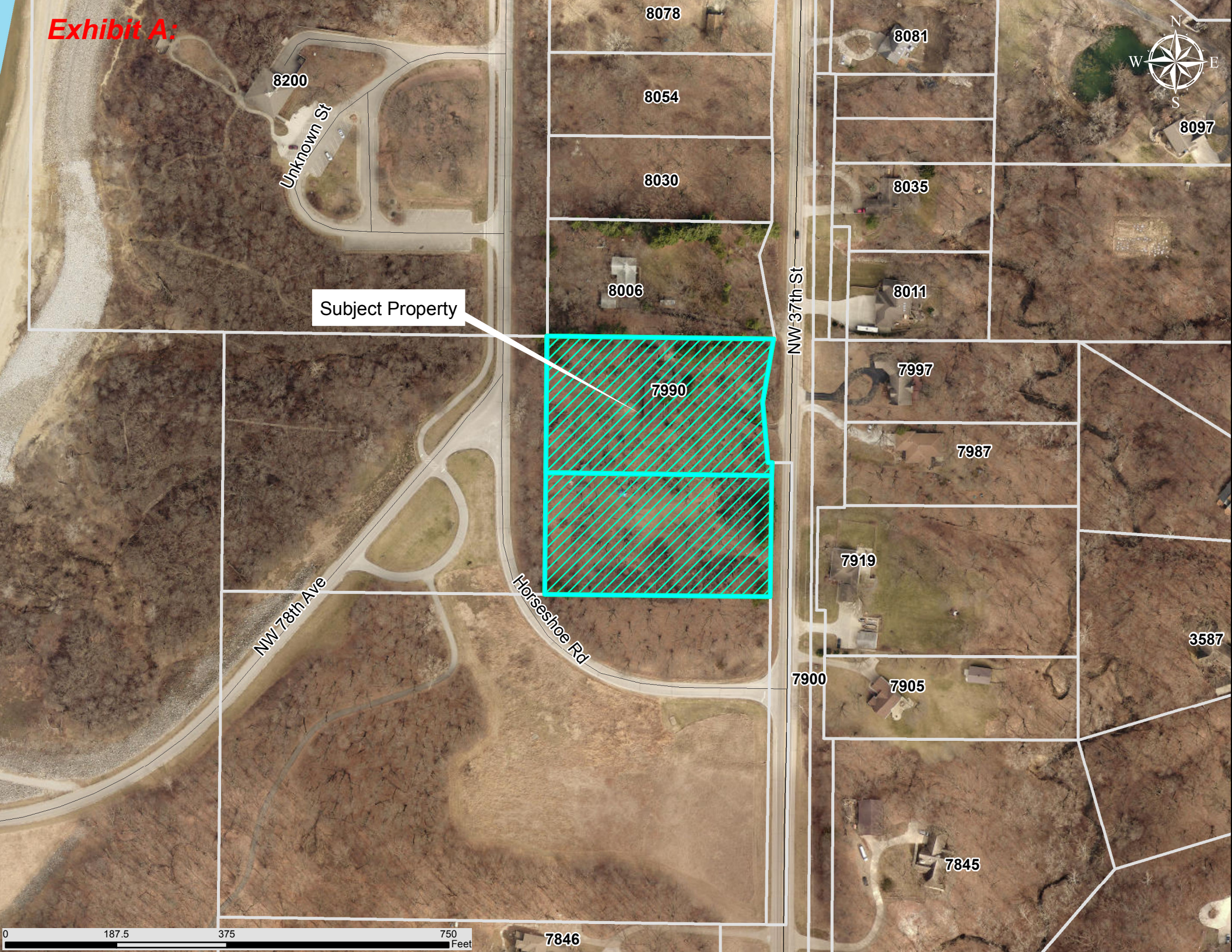
Yes. The impact, if any, on surrounding properties will be minimal.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The existing house was constructed in 1952 and was built pre-zoning in which the setbacks would not have been required. The existing location of the home observes a much smaller setback from the southern property line than the northern property line and may have been situated on the lot differently if zoning had been considered. The Appellant purchased the property as it exists today and the location of the home is not a result from the actions of the Appellant. The property meets all other requirements.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The granting of the requested variance supports the intent of these provisions.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.

Exhibit A:



Subject Property

Unknown St

NW 78th Ave

Horseshoe Rd

NW 37th St



0 187.5 375 750 Feet

8200

8078

8081

8054

8097

8030

8035

8006

8011

7990

7997

7987

7919

3587

7905

7900

7845

7846

