



CITY OF WACONIA PLANNING COMMISSION AGENDA

City of Waconia
Planning Commission
Waconia, Minnesota

Thursday, July 7th, 2016
City Hall – 6:30 PM

MEMBERS: Mike Blanchfield, Steve Hebeisen, Don Osmundson, John Meisch, Nathan Vilmain
ALTERNATE MEMBER: Robert Grohmann
CITY COUNCIL MEMBER LIAISON: Jim Sanborn

STAFF: Lane Braaten, Community Development Director
Brenda Wurst, Recording Secretary

1. Call meeting to order and roll call
 2. Adopt Agenda
 3. Minutes Approval from: June 2, 2106. Pages 1-4
 June 14, 2016 Pages 5-6
 4. New Business
 - A. PUBLIC HEARING: VARIANCE - Request by Michael McLain to Locate a Utility Shed in the Side Yard of the property a 1236 Amber Point. Pages 7-17
 - B. PUBLIC HEARRING: VARIANCE – Request by Chuck and Judy Machtemes to Construct a Home Addition at Reduced Setbacks and Exceed the Hardcover Maximum for the property located at 18 Point Drive. Pages 18-34
 - C. PULIC HEARING: ZONING MAP AMENDMENT – Submitted by Oppidan, Inc. for the properties located at 10590 and 10594 10th Street West. Pages 35-45
 5. Other Business
 - A. DISCUSSION – Temporary Family Health Care Dwelling. Pages 46-53
- Adjourn

WACONIA PLANNING COMMISSION
THURSDAY, JUNE 2nd, 2016

Pursuant to due call and notice thereof, a regular meeting of the Waconia Planning Commission was called to order by Chairperson Blanchfield at 6:30 p.m.

1. CALL MEETING TO ORDER.

MEMBERS PRESENT:	Blanchfield, Osmundson, Meisch, Vilmain and Grohmann
ALTERNATE:	Grohmann
MEMBERS ABSENT:	Hebeisen
STAFF PRESENT:	Braaten
VISITORS:	See Attachment

Braaten indicated that additional public hearing comments had been provided for the Kurth, Weinberger and Matthias variance requests.

2. ADOPT AGENDA: Motion by Vilmain, seconded by Grohmann, to adopt the Agenda as presented. All present voted aye. MOTION CARRIED.

3. APPROVE MINUTES: Motion by Osmundson, second by Meisch to approve the minutes from the May 5th, 2016 meeting. All present voted aye. MOTION CARRIED.

4. NEW BUSINESS

A. PUBLIC HEARING: VARIANCE-REQUEST BY RYAN MOONEN TO PLACEMENT OF A UTILITY BUILDING IN THE SIDE YARD OF THE PROPERTY LOCATED AT 1161 INTERLAKEN PARKWAY NORTH.

Braaten introduced the application by describing the location, zoning and surrounding properties. Further, he indicated a variance was necessary as Mr. Moonen is proposing to locate a utility shed in the side yard of the property located at 1161 Interlaken Parkway North. City Ordinance specifically states “Accessory structures detached from the principal structure shall not be located in any front or side yard, except that a detached garage may be located in a side yard if it meets required setbacks.”

Discussion followed regarding the proposed location of the shed in the side yard of the property. Mr. Moonen indicated that the proposed location would limit the view of said structure from neighboring properties and not block any of the homes existing windows.

The Commission asked about the inconsistencies in the utility building elevations. Mr. Moonen replied that the proposed structure would match the existing home. The images were the closest he could find as a representation of what he was going to build.

Blanchfield opened the public hearing. No comments were received.

Motion by Meisch, second by Vilmain to close the public hearing. All in favor voted aye. MOTION CARRIED.

Motion by Meisch, second by Osmundson to recommend approval of the Variance application submitted by Mr. Moonen with the four conditions of approval stated in the staff report. All in favor voted aye. MOTION CARRIED via a 4-0 vote.

B. PUBLIC HEARING: VARIANCE-REQUEST BY DAN KURTH TO ALLOW A REDUCED SIDE YARD SETBACK FOR THE PROPERTY LOCATED AT 579 TIFFANY LANE.

C. PUBLIC HEARING: VARIANCE-REQUEST BY DAN KURTH TO ALLOW A REDUCED SIDE YARD SETBACK FOR THE PROPERTY LOCATED AT 585 TIFFANY LANE.

Braaten introduced agenda items “B” and “C” explaining to the Commission the he would present the information regarding both applications as they were similar in nature, within the same development and more easily explained together. He indicated that the properties in question were developed as part of the Waterford 3rd Addition plat, which allowed reduced lot sizing and setbacks than typical single-family developments. As such, the Waterford 3rd Addition approval allowed a minimum 6 ft. side yard setback, a 25 ft. front yard setback, and a 35 ft. rear yard setback.

The applicant indicated that a variance was necessary as the properties in question have a 10 drainage and utility easement along their shared property line, which encumbers 10 ft. east and 10 ft. west of the shared north south property line. As the applicant cannot build within the easement area, for all intents and purposes the properties have a 10 ft. side yard setback which limits the home that can be constructed on the parcels. Therefore, the applicant is requesting a 5 ft. side yard setback for both properties to allow a functional floor plan for the homes on said parcels without encroaching into any of the described easement areas.

Discussion followed regarding the number of building sites still available within Waterford 3rd and the 10 ft. (20 ft. overall) drainage and utility easement.

Blanchfield opened the public hearing. Hearing not comments from the public Vilmain moved, second by Grohmann to close the public hearing. All in favor voted aye. MOTION CARRIED.

Motion by Osmundson, second by Vilmain to recommend approval of the Variance requests submitted by Mr. Kurth for 579 and 585 Tiffany Lane with the two conditions stated in the staff report. All in favor voted aye. MOTION CARRIED.

D. PUBLIC HEARING: VARIANCE-REQUEST BY CHRIS WEINBERGER TO ALLOW REDUCED SETBACKS AND EXCEED THE HARDCOVER SURFACE FOR CONSTRUCTION OF A NEW HOME FOR THE PROPERTY LOCATED AT 208 MAIN STREET EAST.

Braaten introduced the application explaining to the Commission that the Weinberger property, located at 208 Main Street East, was unique in the fact that the property was accessed off of an alley intersecting with Spruce Street, approximately ½ block south of Main Street. Further, Braaten described the variance request indicating the applicant was proposing to replace the existing one story structure with a new two level structure and expand the footprint of the building by 160 sq. ft. The proposed overall building height is just short of 26 ft. and the existing building height is approximately 12.5 ft.

Discussion followed regarding the Weinberger Variance request. Mr. Weinberger indicated that the placement of the proposed structure was driven by City Ordinance setback requirements and not encroaching any closer to the neighboring properties.

Osmundson asked the applicant about the letter of opposition and the letter of concern from the neighboring properties to the south and west. Weinberger replied that he had spoken with the neighbors and originally they had no concerns with the proposal.

Blanchfield opened the public hearing at 7:11 PM.

Elizabeth Stacken, 222 Main Street East, indicated that when they purchased their home it was indicated to them that no one could ever build on Mr. Weinberger’s property. She explained she had concerns regarding the proposed expansion of the building vertically as it would significantly alter the existing views from her property.

Motion by Meisch, second by Grohmann to close the public hearing. All in favor voted aye. MOTION CARRIED.

Discussion followed regarding building height. Braaten explained that building height was measured from the highest adjacent grade to the mid-point of the highest gable and that in the Shoreland Overlay District single family homes could be as tall as 35 ft. The applicant is proposing structure of approximately 26 ft. Further discussion followed regarding view from neighboring properties and the impact the proposed structure may have.

Theresa Hamer, 200 Main Street East, gave a brief history of how she believe the parcel was created. She indicated the proposed home would significantly change the property and wipe out her view to the northeast.

Blanchfield stated that he understood the concerns of the neighbors and their desire to retain the current lake views from their properties. He stated that the Commission's decision and recommendation must be determined by the Variance Review Criteria stated in the packet.

Meisch added that it may be appropriate to require the submittal of a stormwater plan as the property exceeds the 25% impervious surface allowed in the Shoreland Overlay District. Blanchfield agreed that it would be appropriate as a condition of approval if the Commission were inclined to recommend approval.

Upon further discussion by the Commission it was determined that in order to make an informed decision on the possible impact of the new home a site visit and further information would be necessary.

Motion by Osmundson, second by Meisch to table the application to: 1) allow the applicant time to submit further information clarifying the view impacts from the neighboring properties, 2) submit a stormwater plan for the property, and 3) directing staff to set up a site visit to the subject parcel and the neighboring properties. All in favor voted aye. MOTION CARRIED.

E. PUBLIC HEARING: VARIANCE-REQUEST BY PETER MATTHIAS TO ALLOW REDUCED SETBACKS AND EXCEED THE HARDCOVER SURFACE FOR CONSTRUCTION OF A NEW HOME FOR THE PROPERTY LOCATED AT 12 POINT DRIVE.

Braaten introduced the application indicating that Mr. Matthias was requesting approval a Variance to construct a new home on the subject property which is bisected by Point Drive causing some significant setback issues when trying to place a new home on the parcel. Braaten further explained the existing conditions proposed conditions and possible conditions of approval if the Commission were inclined to recommend approval.

Discussion followed regarding the Matthias application. It was noted and discussed that Mr. Matthias has been working with the Public Services Director to install a stormwater plan to mitigate the proposed hardcover surface.

Blanchfield opened the public hearing at 7:41 PM and hearing no comments from the public Osmundson motioned, seconded by Grohmann to close the public hearing at 7:42 PM. All in favor voted aye. MOTION CARRIED.

Blanchfield explained his findings regarding the Variance Review Criteria indicating that he was in favor of the applications approval.

Braaten explained that no building plans or elevations were included with the packet material as the applicant did not want to spend addition money designing a home if the Planning Commission and City Council were not in favor of the proposed location. Braaten indicated that, if the variance were approved, City staff would review said building plans and make sure they conform to the variance and the existing City Code. If there were any significant changes or revisions the application would be brought back to the Planning Commission and City Council for review and consideration.

The Commission indicated that property pictures would be beneficial in the future to help the discussion.

Motion Meisch, second Osmundson to recommend approval of the Matthias Variance request with the 4 conditions of approval stated in the packet with one revision. Condition #3 strike the language requiring a raingarden be installed to leave the condition more general. All in favor voted aye. MOTION CARRIED.

5. OTHER

A. MATERIAL REVIEW – Statewide Gas – 201 Main Street West.

Braaten introduced the topic explaining that Tom Kurtz of Statewide Gas was proposing some improvements to the landscaping in front of his building at 201 Main Street East, which falls within the City’s Downtown Design Standards District. The improvements included the use of a rusted metal facing material for a portion of the retaining wall. City Ordinance allows metal as an accent material not exceed 15% of the building façade and as the measurement was close and the material was new to downtown it was brought to the Commission for consideration.

After a short explanation by Tom Kurtz and some conversation it was determined by the Planning Commission that the proposed metal material was acceptable as an accent material in this location and that this material may not be appropriate on all buildings.

Motion by Grohmann, second by Vilmain to approve the rusty metal facing material for the retaining walls in front of Statewide Gas. All in favor voted aye. MOTION CARRIED.

There being no further business, Motion by Osmundson, seconded by Meisch to adjourn at 8:08 PM. All present voted aye. **MOTION CARRIED.**

Respectfully submitted,

Lane L. Braaten
Community Development Director

WACONIA PLANNING COMMISSION
SPECIAL MEETING
TUESDAY, JUNE 14th, 2016

Pursuant to due call and notice thereof, a special meeting of the Waconia Planning Commission was called to order by Chairperson Blanchfield at 6:30 p.m.

1. CALL MEETING TO ORDER.

MEMBERS PRESENT:	Blanchfield, Vilmain, Hebeisen, Osmundson, and Grohmann
ALTERNATE:	Grohmann
MEMBERS ABSENT:	Meisch
STAFF PRESENT:	Braaten, Wurst
VISITORS:	See Attachment

2. ADOPT AGENDA: Motion by Vilmain, seconded by Hebeisen, to adopt the Agenda as presented. All present voted aye. MOTION CARRIED.

3. NEW BUSINESS

A. PUBLIC HEARING VARIANCE AND STEEP SLOPE ALTERATION PERMIT – REQUEST BY FRANK & JUDITH FOSS TO ALLOW CONSTRUCTION OF A NEW HOME AT A REDUCED FRONT YARD SETBACK FOR THE PROPERTY LOCATED AT 224 LAKE STREET WEST.

Braaten introduced the application indicating that the applicants were requesting a variance due to the fact that they wanted to retain the existing garage, which is located 0.9 ft. from the right-of-way of Lake Street, and attached said structure to a new home on the subject parcel. As such, attaching the new home to the existing structure, which is located within the 25 ft. front yard setback, would require an expansion with the front yard setback. Braaten indicated that the expansion within the setback would be approximately 28 sq. ft.

In addition to the Variance request the applicants were also seeking approval of a Steep Slope Alteration Permit as the slope of the subject property is 12%. City Ordinance requires the approval of the Planning Commission and City Council to allow improvement within steep slopes in the City Limits.

Braaten indicated that the Erosion Control Plan had been included in the packet material and had been reviewed by the Public Services Department and the City Engineer. Their comments were included in the proposed conditions of approval in the packet.

The Commission briefly discussed the proposed applications submitted by Mr. and Mrs. Foss.

Motion by Hebeisen, second by Osmundson to recommend approval of the Variance and Steep Slope Alteration Permit submitted by Mr. and Mrs. Foss with the conditions of approval stated in the packet material. All in favor voted aye. MOTION CARRIED.

B. STEEP SLOPE ALTERATION PERMIT – REQUEST BY DAVE AND PAULA KIRSCH TO CONSTRUCT A NEW HOME AND LANDSCAPE IMPROVEMENTS WITHIN A STEEP SLOPE FOR THE PROPERTY LOCATED AT 1302 BEACHCOMBER BLVD.

Braaten introduced the application indicating that the Erosion Control Plan had been reviewed by the Public Services Department and City Engineer and they were comfortable with the proposed plan with the conditions stated in the packet. Further, the property is located within the Shoreland Overlay District and the property owners are proposing to construct a new home with a walkout basement within the steep slope on the property. The slope exceeds 20%, but does not meet the bluff standards. The Planning Commission briefly discussed the application.

Motion by Grohmann, second by Osmundson to recommend approval of the Steep Slope Alteration Permit for Mr. and Mrs. Kirsch for the property located at 1302 Beachcomber Blvd. with the conditions stated in the packet materials. All in favor voted aye. MOTION CARRIED.

4. OLD BUSINESS

- A. VARIANCE – 208 MAIN STREET EAST – THIS AGENDA ITEM WAS TABLED BY THE PLANNING COMMISSION AT THEIR REGULAR MEETING ON JUNE 2ND, 2016 TO ALLOW FOR THE SUBMITTAL OF FURTHER INFORMATION.

Braaten reintroduced the application reminding the Commission that the application was originally tabled at the June 2nd Planning Commission meeting in order to gather further information and visit the site. A meeting was held onsite on Monday, June 13th in which the applicant and the neighboring property owners visited the subject parcel and neighboring parcels to discuss the proposed variance request and the impact a 2 level home may cause.

The Planning Commission briefly discussed the onsite visit, the impact of the proposed structure and the reasonableness of the request.

Motion by Osmundson, second by Hebeisen to recommend approval of the Variance submitted by Mr. Weinberger with the conditions of approval stated in the packet material. All in favor voted aye. MOTION CARRIED.

There being no further business, Motion by Vilmain, seconded by Osmundson to adjourn All present voted aye. **MOTION CARRIED.**

Respectfully submitted,

Lane Braaten
Community Development Director



REQUEST FOR PLANNING COMMISSION ACTION

Meeting Date:	July 7 th , 2016
Item Name:	Public Hearing – Variance Request by Michael McLain to Locate a Utility Shed in the Side Yard of the property at 1236 Amber Point
Originating Department:	Community Development
Presented by:	Lane L. Braaten, Community Development Director

Previous Council Action (if any):			
Item Type (X only one):	Consent	Regular Session	<input checked="" type="checkbox"/> Discussion Session

RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Open Public Hearing
Motion to Close the Public Hearing
Motion Recommending either Approval or Denial of the Variance Request by Michael McLain to Locate a Utility Shed in the Side Yard of the Property at 1236 Amber Point.

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

BACKGROUND:

Applicant: Michael McLain
Owner: Michael McLain
Address: 1236 Amber Point, Waconia MN
PID# 753720380
Zoning: R-1, Single-Family Residential w/ PUD Designation
Legal Description: Lot 9, Block 2, Pinehill

REQUEST:

The City has received a Variance Application from Mr. Michael McLain (the “applicant”) to locate a 120 sq. ft. utility shed within the side yard of his property located at 1236 Amber Point. The variance request is necessary as Section 900.06, Subd. 1.C.1.c. of the City Ordinance states “*Accessory structures detached from the principal structure shall not be located in any front or side yard, except that a detached garage may be located in a side yard if it meets required setbacks.*”

APPLICABLE ORDINANCE PROVISIONS:

1. Section 900.04 – Definitions
2. Section 900.05 – District Regulations, Subd. 2.A – R-1, Single-Family Residential District
3. Section 900.06 – Supplementary Regulations, Subd. 1.C – Accessory Structures
4. Section 900.12 – Administration, Enforcement and Procedures, Subd. 4 - Variances

DEFINITIONS:

1. Accessory Structure: A structure subordinate to, and serving the principal structure on the same lot and customarily incidental thereto.
2. Utility Building: An accessory building which is not usable for the storage of vehicles; is one-story in nature; is used or intended for the storage of hobby tools, garden equipment, etc.; is detached from the principal structure; and which is naturally and normally incidental to, subordinate to, and auxiliary to the principal dwelling structure.
3. Yard, Front: A yard extending across the front of the lot between the side property lines and lying between the front lot line and the nearest line of the building.

4. Yard, Rear: A yard extending across the rear of the lot between the side property lines and lying between the rear lot line and the nearest line of the building.
5. Yard, Side: A yard between the side lot line and the nearest line of the building and extending from the front yard line to the rear yard line.

VARIANCE REVIEW CRITERIA:

Waconia City Code Section 900.12, Subd. 4 and Minnesota State Statute 462.357, Subd. 6 establishes criteria to be considered when contemplating the issuance of a variance in terms of “practical difficulty” as follows: Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.” So a city evaluating a variance application should make findings as to:

1. Is the variance in *harmony with* the purposes and intent of the ordinance?
2. Is the variance *consistent with the comprehensive plan*?
3. Does the proposal put property to use in a *reasonable manner*?
4. Are there *unique circumstances* to the property not created by the landowner?
5. Will the variance, if granted, alter the *essential character* of the locality?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Whereas, practical difficulties exist only when the three statutory factors are met (1. reasonableness, 2. uniqueness, and 3. essential character).

VARIANCE ANALYSIS:

Utility Shed Setback Requirements:

Rear Yard Setback = 10 ft. minimum
Interior Side Yard Setback (East Side) = 5 ft. minimum
Interior Side Yard Setback (West Side) = 10 ft. minimum

The applicant is proposing to locate a 10 ft. x 12 ft. utility building on the east side of the existing home, in the side yard, outside of the 5 ft. drainage and utility easement which extends along the east property line. The Ordinance allows utility buildings to be located in the rear yard only.

Accessory Structure/Utility Building Requirements:

Location Requirement: *Accessory structures, detached from the principal structure shall not be located in any front or side yard, except that a detached garage may be located in a side yard if it meets required setbacks.*
Utility Building: *Utility buildings shall not exceed 144 square feet.*
Height Requirement: *No accessory structure detached from the principal structure shall exceed 20 ft. in height.*

The proposed 120 sq. ft. utility shed is in compliance with the height and size requirements stated in the City Code.

PUBLIC NOTICE/COMMENT:

The notice was published in the WACONIA PATRIOT on June 23rd, 2016 and posted at Waconia City Hall. Individual notices were mailed to property owners within 350 feet of the subject parcel. As of the time and date of this report staff has not received any comments regarding this application.

RECOMMENDATION:

The Planning Commission should hold the required public hearing, review the variance request submitted by Mr. McLain based on the Variance Criteria stated above and make a recommendation to the City Council. Upon a formal recommendation by the Planning Commission this application will be forwarded to the City Council for review at their upcoming meeting on July 11th, 2016.

If the Planning Commission chooses to recommend approval of the shed variance submitted by Mr. McLain, staff would recommend the approval upon the following conditions:

- 1) The utility shed be constructed as proposed and as conditionally revised by the Planning Commission and City Council.
- 2) All applicable permits are applied for by the applicant with all supporting documentation and issued prior to the start of construction.
- 3) The utility shed shall be located outside of the 5 ft. drainage and utility easement along the east property line.
- 4) The utility shed shall be located within the side yard on the east side of the home or in a conforming location in the rear yard.

ATTACHMENTS:

1. Variance Application (3 pages)
2. Public Hearing Notice (1 page)
3. Statement of Variance (1 page)
4. Location Map (1 page)
5. Site Plan (1 page)
6. Utility Building Elevation (1 page)



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135
www.waconia.org

VARIANCE

APPLICANT INFORMATION

1. Owner's Name: Michael McLain
2. Address of Property: 1236 Amber Pt.
3. Legal Description: Lot 9 Block 2 Pinehill
4. Applicant's Name: Michael McLain
5. Mailing Address: 1236 Amber Pt.
6. Daytime Phone(s): 651-208-4518
7. Email Address: mmclain@shakopeeMN.gov

The City will distribute copies & appropriate information to applicant via email

OFFICE USE ONLY

Date Received: 6-3-16

Fee: \$ 125.00
Receipt #: 0248434



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135

VARIANCE APPLICATION

1. Present Zoning: Residential
2. Existing use of Property: Residential
3. Has request for a variance on this property been sought previously? If so, when? No

IMPORTANT

Subd. 4. Variances

- A. No variance shall be granted to allow a use not permitted under the terms of this Ordinance in the district involved. In granting a variance the Board may prescribe appropriate conditions in conformity with this Ordinance. When such conditions are made part of the terms under which the variance is granted, violation of the conditions is a violation of this Ordinance. A variance shall not be granted by the Board unless it conforms to the following standards:
1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and do not result from the actions of the petitioner.
 2. Literal interpretation of the provisions of this Ordinance would deprive the petitioner of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 4. The proposed variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
 5. FINANCIAL SAVINGS WILL NOT CONSTITUTE A HARDSHIP.

THE FOLLOWING INFORMATION MUST BE FURNISHED IN ORDER TO PROCESS THE APPLICATION

1. A letter from the applicant(s) which should address the following:
 - Explain (in detail) the variance you are requesting (giving distances where appropriate).
 - Conditions or peculiar difficulties to the structure or land, which makes a variance necessary.
 - Why do you feel a variance should be granted in this instance?
2. Payment of application fee (**\$125 residential; \$275 non-residential**)
3. **Non-residential variance requests are required to submit an escrow payment in the amount of \$1,000.00.**

****Additional information may be requested by staff, based on the proposal. Additional consulting review fees may apply, such as civil engineering and legal counsel.**

4. Scaled site plan with north arrow indicating existing structures and proposed additions or modification to structures.
5. Show all distances of buildings and structures from property lines.
6. Show any unique features to property associated with variance request (i.e. trees, ravines, steep slopes, etc.).

The Planning Commission may or may not hold a public hearing on the request (based on the amount of the variance requested). The Planning Commission should make a recommendation to the City Council within sixty (60) days. If they do not, the City Council may proceed without the Planning Commission's recommendation.

The City Council may approve, approve with conditions, or deny the variance. If a variance is denied the applicant cannot resubmit a variance request for that same property until six (6) months has lapsed. If a variance is approved, it should be made use of within one (1) year or it will become void.

A violation of any condition set forth in the granting of the variance shall be a violation of the zoning ordinance and automatically terminate the variance.

Applicant's Signature:



Date:

6-3-2016

Printed Name:

Michael McLean

CITY OF WACONIA, MN
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Waconia, MN, will hold a public hearing on Thursday, July 7th, 2016 at 6:30 p.m., at the Waconia City Hall, 201 South Vine Street, Waconia, MN, to consider a Variance request to allow a utility building to be located in the side yard of the property located at 1236 Amber Point (PID# 753720380), which is zoned R-1 Single Family Residential District.

The applicant, Michael McLain, is requesting approval of a variance to construct a 10 ft. x 12 ft. (120 sq. ft.) shed in the side yard of the subject parcel versus the City Code Section 900.06, Subd. 1, C. subpart c. which states: *“accessory structures detached from the principal structure shall not be located in any front or side yard, except that a detached garage may be located in a side yard if it meets required setbacks.”*

Pertinent information pertaining to this request is available at City Hall. Interested persons may submit written or oral comments pertaining to this matter any time prior to the hearing, or at the hearing on Thursday, July 7th, 2016. Written comments will be distributed to the Planning Commission for review and consideration. Please submit written comments by mail, email or in person as follows:

Mail/in person: Attention: Lane L. Braaten, 201 South Vine Street, Waconia, MN 55387
Email: lbraaten@waconia.org

By: WACONIA PLANNING COMMISSION
ATTEST: Lane L. Braaten, Community Development Director

(Published in the June 23rd, 2016 Waconia Patriot newspaper)

Lane Braaten

From: Michael McLain <MMcLain@ShakopeeMN.gov>
Sent: Friday, June 03, 2016 3:37 PM
To: Lane Braaten
Subject: Shed Variance

To whom it may concern:

I am applying for a variance for a storage shed to be placed behind the third stall of my garage. I would like to place the shed there so that it will be hidden and not obstruct my backyard. The shed will be used for storing my kids toys, along with mower and snowblower. I am looking to free up space in my garage to store my motorcycle, boat and portable fish house. The shed will fit behind the third stall as not to be seen from the road, nor will it infringe upon the property line. I spoke with my neighbor Mike about me placing a shed there before I even considered placing a shed in that area. He did not appear to have any problems with the shed or it's location. The shed is 10' x 12' x 12', which is what the space behind the garage allows. That size also allows me room to maintain my property around the shed and between the house.

I appreciate the City's ordinance and the consideration it has for my neighbor's. I assure everyone that it is a nice shed and will be maintained appropriately. Thank you for your time and consideration of my variance request.

Sincerely,

Michael McLain
1236 Amber Pt

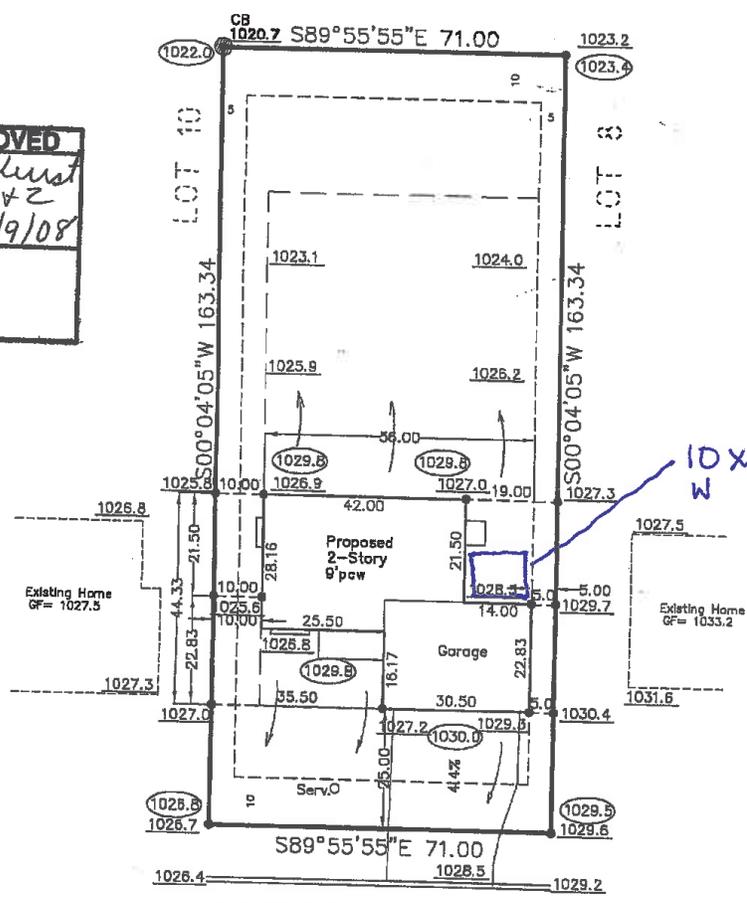
Surveyor's Certificate

SURVEY FOR : Mattamy
 DESCRIBED AS : Lot 9, Block 2, PINEHILL, City of Waconia, Carver County, Minnesota and reserving easements of record.

Charleswood II Spec.

APPROVED
 BY: *B. Alust*
 DEPT: *P+Z*
 DATE: *10/9/08*
 BY:
 DEPT:
 DATE:

PROPOSED ELEVATIONS MUST COMPLY WITH FINAL GRADING PLAN. BUILDER IS RESPONSIBLE FOR DRAINAGE PATTERNS, ELEVATIONS FOR HOUSE, AND FINAL LOT GRADING.



AMBER POINT

1236

LOT SQ. FOOTAGE = 11,597

Note: Proposed Lot Corners Elevations, Are Per City Approved Grading Plan.

PROPOSED ELEVATIONS

- Top of Foundation = 1030.5
- Garage Floor = 1030.1
- Basement Floor = 1021.7
- Aprox. Sewer Service = Verify
- Proposed Elev. =
- Existing Elev. =
- Drainage Directions =
- Denotes Offset Stake =



BENCHMARK,
 TNH= 9.10/1
 EL= 1038.56

MIN. SETBACK REQUIREMENTS

Front - 25 House Side - 10
 Rear - 30 Garage Side - 5

SCALE: 1 inch = 30 feet

HEDLUND
 PLANNING ENGINEERING SURVEYING
 2005 Pin Oak Drive
 Eagan, MN 55122
 Phone: (651) 405-6600
 Fax: (651) 405-6606

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF THE BOUNDARIES OF THE ABOVE DESCRIBED PROPERTY AS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION AND DOES NOT PURPORT TO SHOW IMPROVEMENTS OR ENCROACHMENTS, EXCEPT AS SHOWN.
 DATE *9/26/08*
Jeffrey D. Lindgren
 JEFFREY D. LINDGREN, LAND SURVEYOR
 MINNESOTA LICENSE NUMBER 14376

JOB NO:
 08R-191
 BOOK: PAGE:
 CAD FILE:
 Mattamy-08





REQUEST FOR PLANNING COMMISSION ACTION

Meeting Date:	July 7 th , 2016
Item Name:	Public Hearing – Variance Request by Chuck & Judy Machtemes to Construct a Home Addition at Reduced Setbacks and Exceed the Hardcover Maximum for the property located at 18 Point Drive
Originating Department:	Community Development
Presented by:	Lane L. Braaten, Community Development Director
Previous Council Action (if any):	
Item Type (X only one):	Consent Regular Session <u>X</u> Discussion Session
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>	

Open Public Hearing
Motion to close the Public Hearing
Motion recommending either approval or denial of the Variance Request by Chuck and Judy Machtemes to construct a home addition at reduced setback requirements and hardcover exceeding the lot requirements stated in the R-2, Single-Family Residential District and the Shoreland Overlay District for the property located at 18 Point Drive.

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

BACKGROUND:

Applicant: Chuck & Judy Machtemes
Owner: Chuck & Judy Machtemes
Address: 18 Point Drive, Waconia MN
PID# 752960210
Zoning: R-2, Single-Family Residential District
Special District: Shoreland Overlay District

REQUEST:

The City has received a Variance Application from Chuck & Judy Machtemes (the “applicants”) to construct a 663 sq. ft. garage addition to the principal structure on the property located at 18 Point Drive. The variance is necessary as the applicant is proposing a 11.6 ft. front yard setback, a 9.5 ft. side yard setback and a proposed hardcover surface of 28.4% versus the 25 ft. front yard setback, the 10 ft. side yard setback and the 25% maximum hardcover allowed in the R-2, Single-Family Residential District and the Shoreland Overlay District.

APPLICABLE ORDINANCE PROVISIONS:

1. Section 900.05 – District Regulations, Subd. 2.B – R-2, Single-Family Residential District
2. Section 900.06 – Supplementary Regulations, Subd. 7 – Shoreland Overlay District
3. Section 900.12 – Administration, Enforcement and Procedures, Subd. 4 - Variances

VARIANCE REVIEW CRITERIA:

Waconia City Code Section 900.12, Subd. 4 and Minnesota State Statute 462.357, Subd. 6 establishes criteria to be considered when contemplating the issuance of a variance in terms of “practical difficulty” as follows: Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.” So a city evaluating a variance application should make findings as to:

1. Is the variance in *harmony with* the purposes and intent of the ordinance?
2. Is the variance *consistent with* the *comprehensive plan*?

3. Does the proposal put property to use in a *reasonable manner*?
4. Are there *unique circumstances* to the property not created by the landowner?
5. Will the variance, if granted, alter the *essential character* of the locality?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Whereas, practical difficulties exist only when the three statutory factors are met (1. reasonableness, 2. uniqueness, and 3. essential character).

VARIANCE ANALYSIS and PLANNING CONSIDERATIONS:

The applicant is proposing to construct an attached garage addition to the existing home on the property located at 18 Point Drive. Table 1.1 below indicates the existing, required, and proposed lot requirements for the property as indicated in the R-2, Single-Family Residential District and the Shoreland Overlay District.

Table 1.1

	Lot Requirements – R-2 & Shoreland	Existing Conditions	Proposed Conditions
Lot Area	7,850 sq. ft. min.	12,354*	N/A
Lot Width	50 ft. min.	60.53 ft.	N/A
Hardcover Surface	25% max.	28.4%*	28.4%
Front Yard Setback	25 ft. min.	9.2 ft.**	11.6 ft.**
Side Yard Setback	10 ft. min.	0.7 ft.	9.5 ft.***
OHWL Setback	50 ft. min.	45.6 ft.	45.6 ft.

* For purposes of this review the easement areas for the location of Point Drive were removed from the hardcover calculations. The area used to determine hardcover assumes a total lot area of 10,927 sq. ft. outside of the easement.

** For purposes of this review staff has interpreted the edge of the Point Drive easement area as right-of-way and required typical setbacks from the edge of said easement.

*** The 9.5 ft. measurement is the closest point of the proposed attached garage to the side lot line. This measurement does not take into consideration the non-conforming location of the existing home which is 0.7 ft., at its closest point, to the side lot line.

1. The table above indicates that the lot area and lot width are conforming and the existing non-conforming location of the home is setback 45.6 ft. from the OHWL of Lake Waconia and will not encroach any further into the required setback from the lake.
2. The applicant is proposing to increase the front yard setback from the Point Drive easement area by 2.4 feet. The current setback from the attached garage to the easement area is 9.2 feet and is proposed to be increased to 11.6 ft.
3. The existing home, including the current single stall attached garage, is located 0.7 feet from the side lot line shared with the property to the southeast. The applicant is proposing to remodel the existing home, including the existing single stall garage, into additional living space and proposing to construct a new 2 stall garage 9.5 feet from the side lot line shared with the neighbor to the northwest.
4. The existing hardcover surface on the parcel is 28.4% versus the 25% maximum allowed in the Shoreland Overlay District. The applicant is proposing to remove the lakeside patio (231 sq. ft.) and the gravel drive on the south side of Point Drive (823 sq. ft.) to offset the hard surfaces included in the proposed project. The removal of the afore-mentioned surfaces would allow the applicant to remain at 28.4% hardcover for the subject parcel. If the Commission recommends approval of the application removal of the patio and gravel drive should be a condition of said approval.
5. The Certificate of Survey indicates a hard surface coverage of 38.1%, which does not take into account the removal of the patio and gravel drive discussed in the applicants variance statement.
6. The property is located in the Shoreland Overlay District which allows a maximum hardcover of 25% of the subject parcel. The Commission, in previous variance applications for properties in the Shoreland Overlay District, has required the submittal and installation of a stormwater plan for the property. The Planning Commission should consider if a stormwater plan/stormwater mitigation is required for the property as the applicant is proposing to remain at the existing hardcover percentage of 28.4%.

7. There is a 33 sq. ft. portion of the improved road surface of Point Drive which is located outside of the easement area.
8. The Certificate of Survey indicates an “Area of Possible Ownership” located along the south property line. This area has been included in the overall lot area for the impervious surface calculations, but no further clarifying language has been provided indicating if the property is indeed owned by the Mr. and Mrs. Machtemes. The note on the survey states “Lot area includes that part shown as possible ownership by accretion, which is an approximation and not defined.” The Planning Commission should consider if the information provided is sufficient regarding the area of possible ownership or if additional information is necessary to make a final determination regarding the variance request.
9. The applicant was previously granted a variance for the property on July 1st, 2013, via Resolution 2013-235, to allow the construction of a detached accessory structure on the south side of Point Drive. The applicant decided to not move forward with the project in 2013 and instead constructed/placed a small 12ft. x 12 ft. utility shed on the property south of Point Drive.

PUBLIC NOTICE/COMMENT:

The notice was published in the WACONIA PATRIOT on June 23rd, 2016 and posted at Waconia City Hall. Individual notices were mailed to property owners within 350 feet of the subject parcel. As of the time and date of this report staff has not received any comments regarding this application.

RECOMMENDATION:

The Planning Commission should hold the required public hearing, review the variance request submitted by Mr. and Mrs. Machtemes based on the Variance Criteria stated above and make a recommendation to the City Council. Upon a formal recommendation by the Planning Commission this application will be forwarded to the City Council for review at their upcoming meeting on July 11th, 2016.

If the Planning Commission chooses to recommend approval of the setback and hardcover surface variance submitted by Mr. and Mrs. Machtemes, staff would recommend the approval upon the following conditions:

- 1) The home be constructed as proposed and as conditionally revised by the Planning Commission and City Council.
- 2) All applicable permits are applied for by the applicant with all supporting documentation and issued prior to the start of construction.
- 3) The applicant shall install stormwater improvements to mitigate the proposed impervious surface on the parcel. A final stormwater plan shall be reviewed and approved by City staff prior to the issuance of a building permit.
- 4) The existing lake side patio (231 sq. ft.) and the gravel drive (823 sq. ft.) shall be removed and no additional hardcover surface shall be allowed on the subject parcel without the submittal and approval of a variance through the City.

ATTACHMENTS:

1. Variance Application (3 pages)
2. Public Hearing Notice (1 page)
3. Statement of Variance (1 page)
4. Location Map (1 page)
5. Elevations and Floor Plans (6 pages)
6. Aerial Image (1 page)
7. Certificate of Survey (1 page)



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135
www.waconia.org

VARIANCE

APPLICANT INFORMATION

1. Owner's Name: Chuck & Judy Machtemes
2. Address of Property: 18 Point Drive
3. Legal Description: Lot 2 Re-plat of Outlet A HARMSLAKEVIEW Terrace
First Addn.
4. Applicant's Name: Chuck & Judy Machtemes
5. Mailing Address: 18 Point Drive
6. Daytime Phone(s): Chuck 952-994-3765 Judy 612-554-3207
7. Email Address: jmachtemes@mediacombb.net

The City will distribute copies & appropriate information to applicant via email

OFFICE USE ONLY

Date Received: 6/2/16

Fee: \$ 125⁰⁰
Receipt #: 0248334



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135

VARIANCE APPLICATION

1. Present Zoning: Residential
2. Existing use of Property: Residential
3. Has request for a variance on this property been sought previously? If so, when? Yes
2 yrs Ago for garage across street to find too close to high water mark.

IMPORTANT

Subd. 4. Variances

A. No variance shall be granted to allow a use not permitted under the terms of this Ordinance in the district involved. In granting a variance the Board may prescribe appropriate conditions in conformity with this Ordinance. When such conditions are made part of the terms under which the variance is granted, violation of the conditions is a violation of this Ordinance. A variance shall not be granted by the Board unless it conforms to the following standards:

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and do not result from the actions of the petitioner.
2. Literal interpretation of the provisions of this Ordinance would deprive the petitioner of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
4. The proposed variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
5. FINANCIAL SAVINGS WILL NOT CONSTITUTE A HARDSHIP.

THE FOLLOWING INFORMATION MUST BE FURNISHED IN ORDER TO PROCESS THE APPLICATION

1. A letter from the applicant(s) which should address the following:
 - Explain (in detail) the variance you are requesting (giving distances where appropriate).
 - Conditions or peculiar difficulties to the structure or land, which makes a variance necessary.
 - Why do you feel a variance should be granted in this instance?
2. Payment of application fee (\$125 residential; \$275 non-residential)
3. Non-residential variance requests are required to submit an escrow payment in the amount of \$1,000.00.

****Additional information may be requested by staff, based on the proposal. Additional consulting review fees may apply, such as civil engineering and legal counsel.**

4. Scaled site plan with north arrow indicating existing structures and proposed additions or modification to structures.
5. Show all distances of buildings and structures from property lines.
6. Show any unique features to property associated with variance request (i.e. trees, ravines, steep slopes, etc.).

The Planning Commission may or may not hold a public hearing on the request (based on the amount of the variance requested). The Planning Commission should make a recommendation to the City Council within sixty (60) days. If they do not, the City Council may proceed without the Planning Commission's recommendation.

The City Council may approve, approve with conditions, or deny the variance. If a variance is denied the applicant cannot resubmit a variance request for that same property until six (6) months has lapsed. If a variance is approved, it should be made use of within one (1) year or it will become void.

A violation of any condition set forth in the granting of the variance shall be a violation of the zoning ordinance and automatically terminate the variance.

Applicant's Signature: Chuck Machtemes

Date: 6/2/2016

Printed Name: Chuck Machtemes

CITY OF WACONIA, MN
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Waconia, MN, will hold a public hearing on Thursday, July 7th, 2016 at 6:30 p.m., at the Waconia City Hall, 201 South Vine Street, Waconia, MN, to consider a Variance request to exceed the hardcover maximum and allow reduced principal structure setbacks for the property located at 18 Point Drive (PID# 752960210), which is zoned R-2, Single-Family Residential District and located within the Shoreland Overlay District.

The applicants, Chuck & Judy Machtemes, are requesting approval of a variance to allow the construction of 663 sq. ft. garage addition to the principal structure on the subject parcel with a side yard setback of 9.5 ft., a front yard setback of 11.6 ft. and a maximum hardcover of 28.4% versus the lot requirements stated in the R-2, Single-Family Residential District and Shoreland Overlay District which require a 10 ft. minimum side yard setback, a 25 ft. minimum front yard setback and a maximum hardcover of 25% in the Shoreland area.

Pertinent information pertaining to this request is available at City Hall. Interested persons may submit written or oral comments pertaining to this matter any time prior to the hearing, or at the hearing on Thursday, July 7th, 2016. Written comments will be distributed to the Planning Commission for review and consideration. Please submit written comments by mail, email or in person as follows:

Mail/in person: Attention: Lane L. Braaten, 201 South Vine Street, Waconia, MN 55387

Email: lbraaten@waconia.org

By: WACONIA PLANNING COMMISSION

ATTEST: Lane L. Braaten, Community Development Director

(Published in the June 23rd, 2016 Waconia Patriot newspaper)

June 2, 2016

City of Waconia
201 South Vine Street
Waconia, MN 55387

We want to add a 2 car garage 26' x 27' attached to our existing house. The variance is needed because the road easement runs thru our property and the existing hardcover for the area in the easement is 2169' which doesn't give us the required 25% hardcover.

We propose to remove the gravel drive and the patio to keep the proposed hardcover to the same or less as the current.

Our existing garage is a small one stall garage and we would like to be able to put both vehicles in a garage. The existing road thru the middle of our property really is the reason we need the variance. With our proposed changes in the hard cover area we feel this is a way for us to be granted a variance.

Chuck and Judy Machtemes
18 Point Drive

LOCATION MAP—18 POINT DRIVE



New garage roof pitch to match existing roof. Field verify.

Roofing to match existing
15# felt underlayment,
ice & watershed 5' up eaves
1/2" Plywood roof sheathing

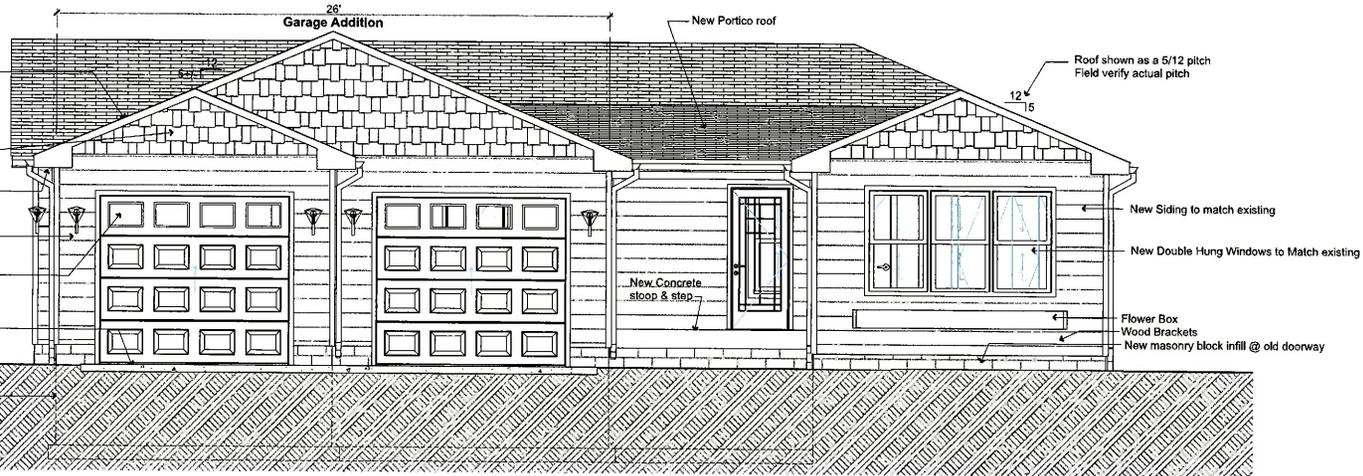
New Gables finish to match existing
front gable

Roof overhangs to match existing so new
fascia board flush w/ existing fascia boards

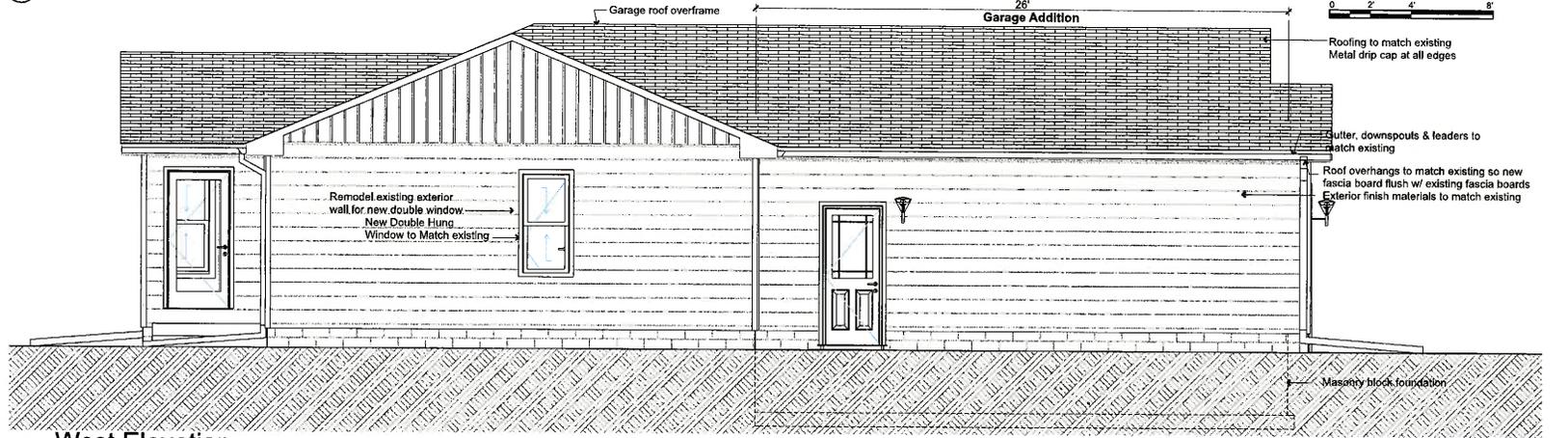
Exterior finish materials to match existing

9/0x8/0 Overhead garage doors
with glazing in top panel

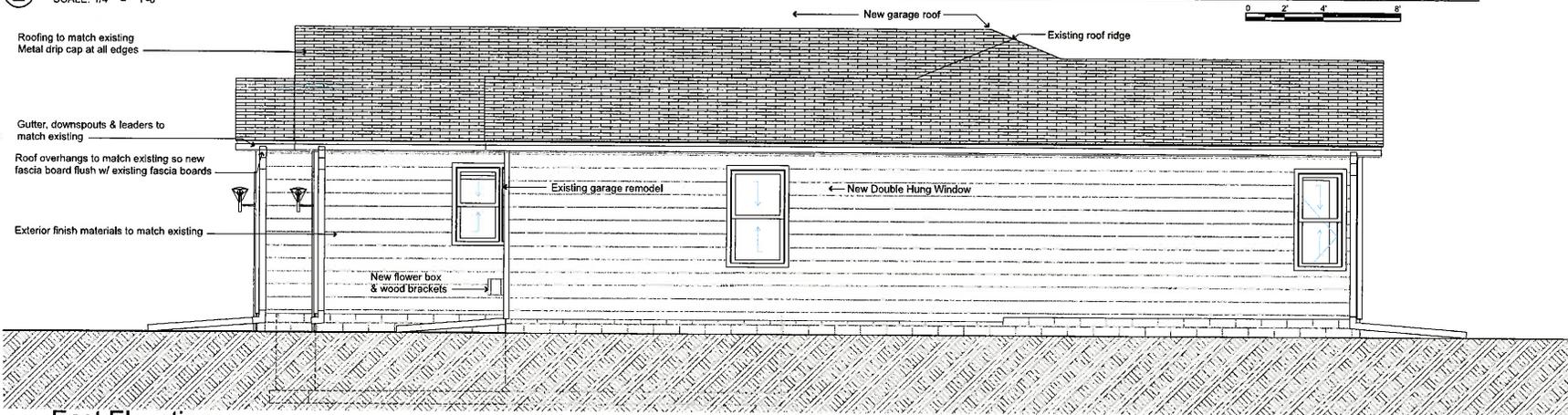
New driveway



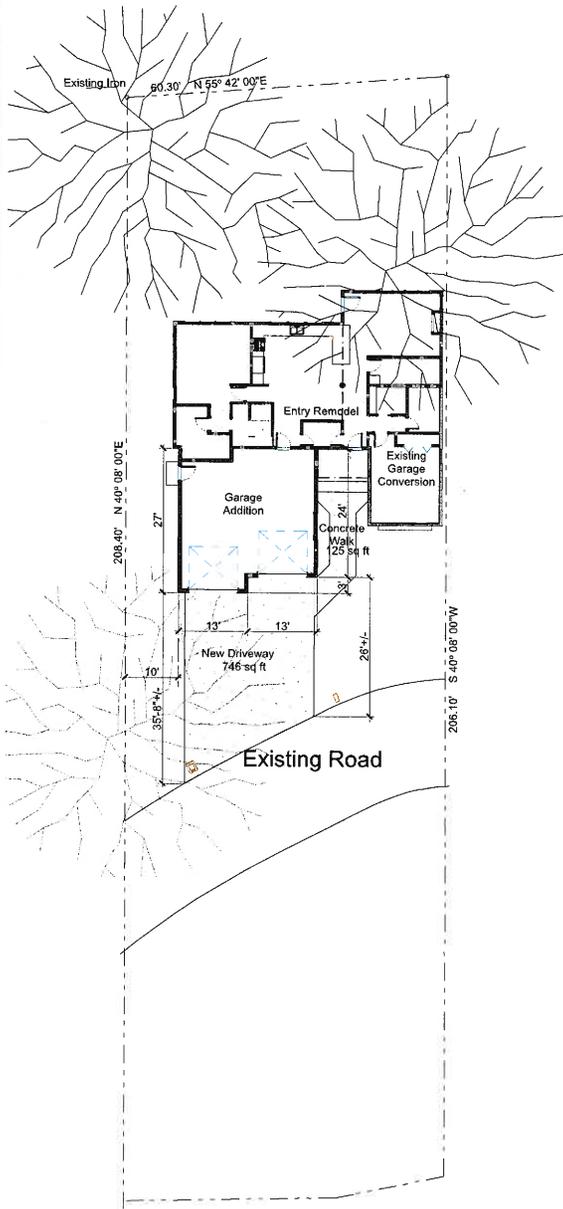
① South Elevation
SCALE: 1/4" = 1'-0"



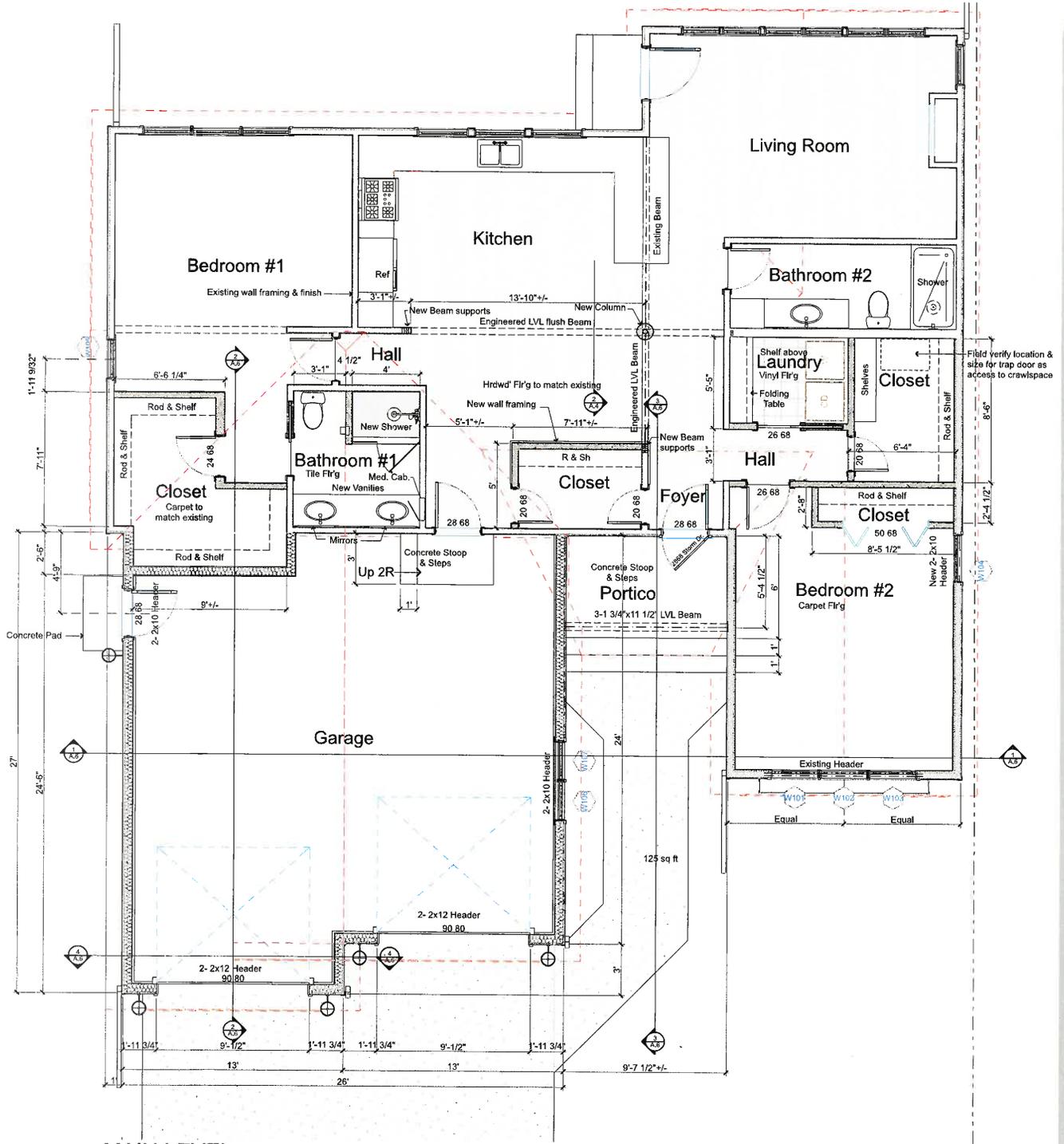
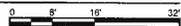
② West Elevation
SCALE: 1/4" = 1'-0"



③ East Elevation
SCALE: 1/4" = 1'-0"

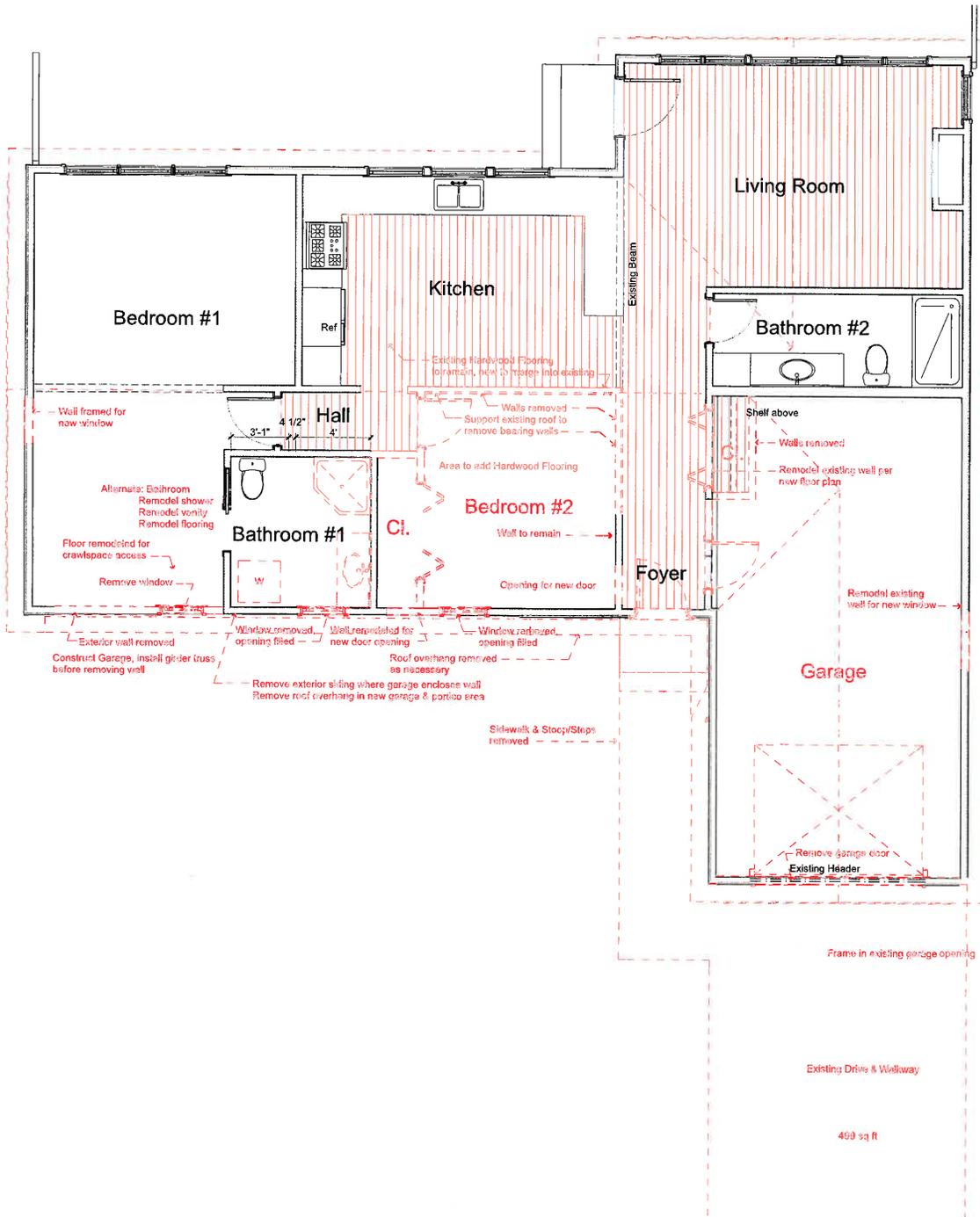


1 SITE PLAN
SCALE: 1/16" = 1'-0"



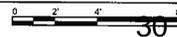
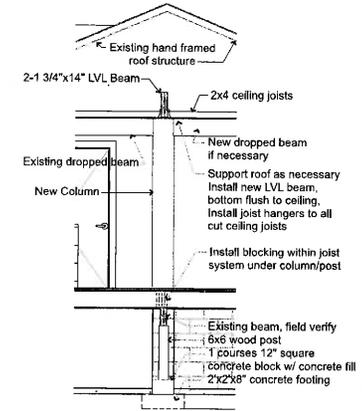
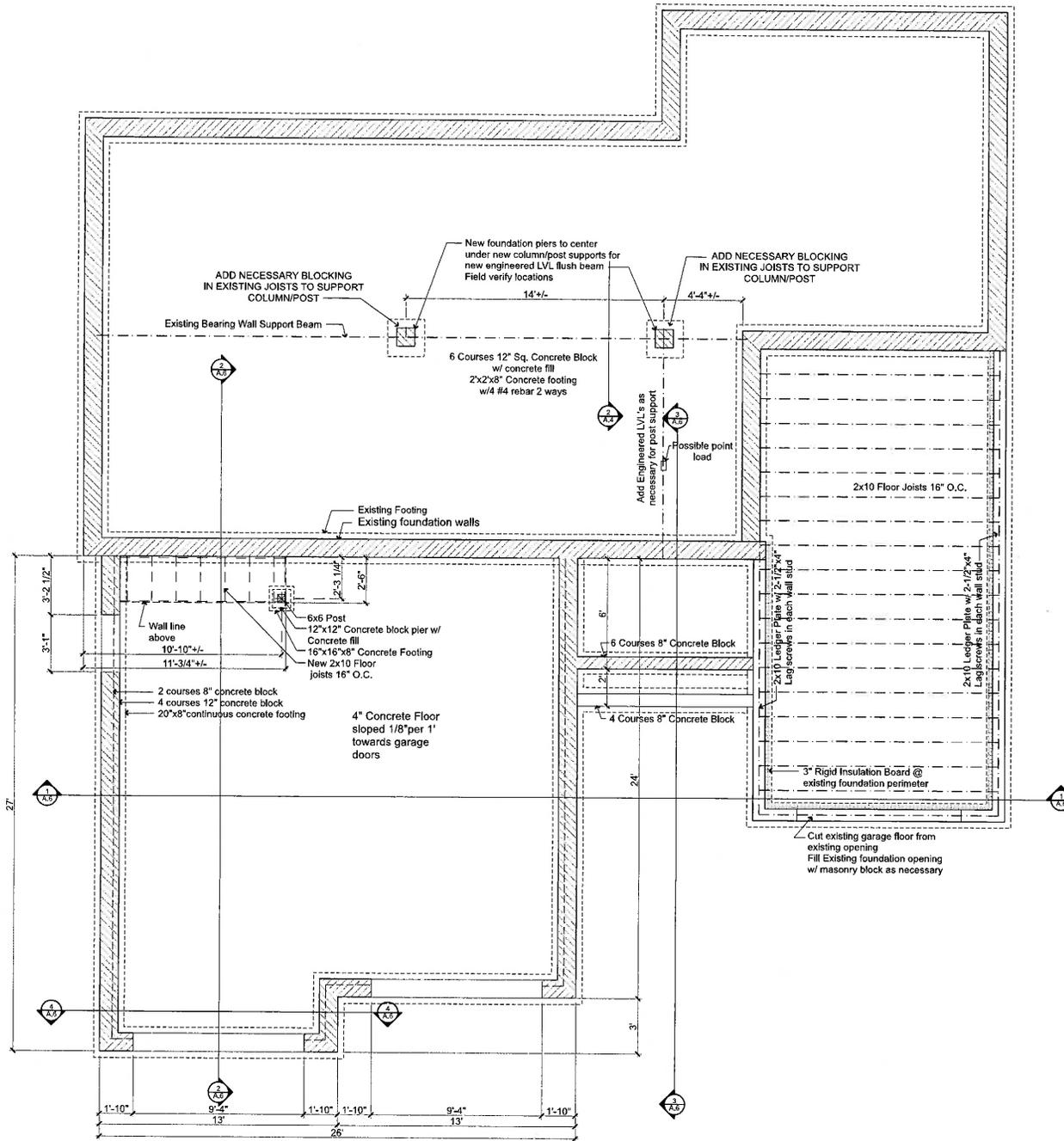
2 MAIN LEVEL
SCALE: 1/4" = 1'-0"





1 Demolition Plan
SCALE: 1/4" = 1'-0"



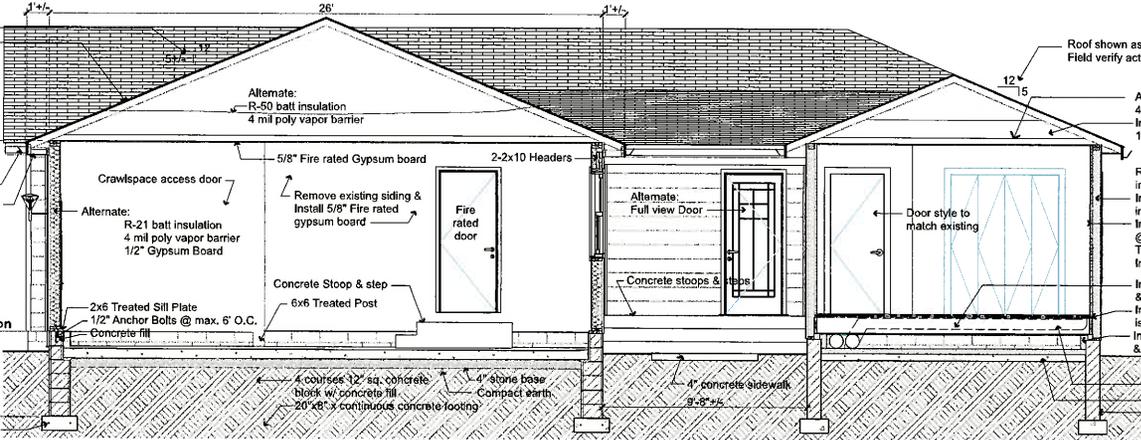


New garage roof pitch to match existing roof
 Roofing to match existing
 15# felt underlayment
 Ice & watershed 6" up eaves
 1/2" Plywood roof sheathing
 Roof overhangs to match existing so new fascia board flush w/ existing fascia boards

Top of Wall Plate
 Top of plate to flush with existing house top plate
 New gutters to match existing
 Fascia & soffits to match existing
 2x6 Wall Frame, studs 16" O.C.
 1/2" plywood sheathing or equal
 Siding to match existing @ house

Top of new block to match top of existing house foundation
Top of Block Foundation

Top of Footing
 2 courses 8" concrete block
 4 courses 12" concrete block



Roof shown as a 5/12 pitch
 Field verify actual pitch

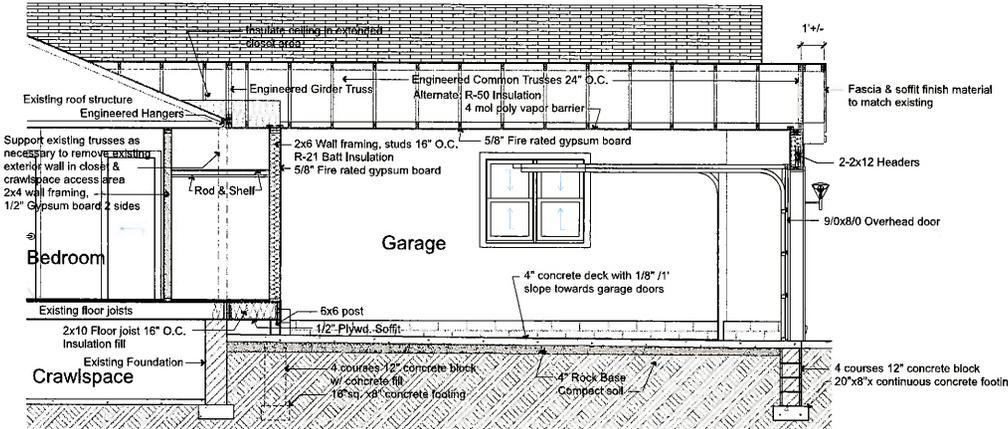
Add 2x4 ceiling joists to 16" O.C.
 4 Mil Poly Vapor Barrier
 Insulate ceiling to R-50
 1/2" Gypsum Board

Remove existing gypsum board in garage walls.
 Insulate existing walls w/ R-13 batt insulation.
 Install 1" rigid insulation w/ foil backing @ all exterior walls from floor to ceiling.
 Tape all joints or install 4 mil poly vapor barrier
 Install 1/2" gypsum board
 Install 2x10 Floor joists 16" O.C. & 3/4" T&G plywood subfloor.
 Install all so top of new subfloor is flush with top of existing subfloor
 Install 3" Rigid insulation on concrete deck & all along inside of existing concrete block

Install warm & cold air ducts
 Existing garage concrete deck
 Existing garage foundation

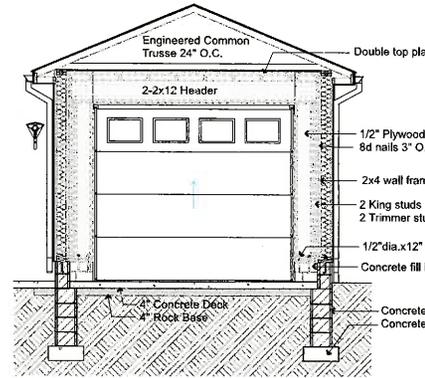
Garage Cross Section

SCALE: 1/4" = 1'-0"



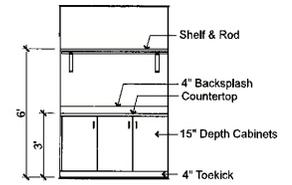
Garage Longitudinal Section

SCALE: 1/4" = 1'-0"



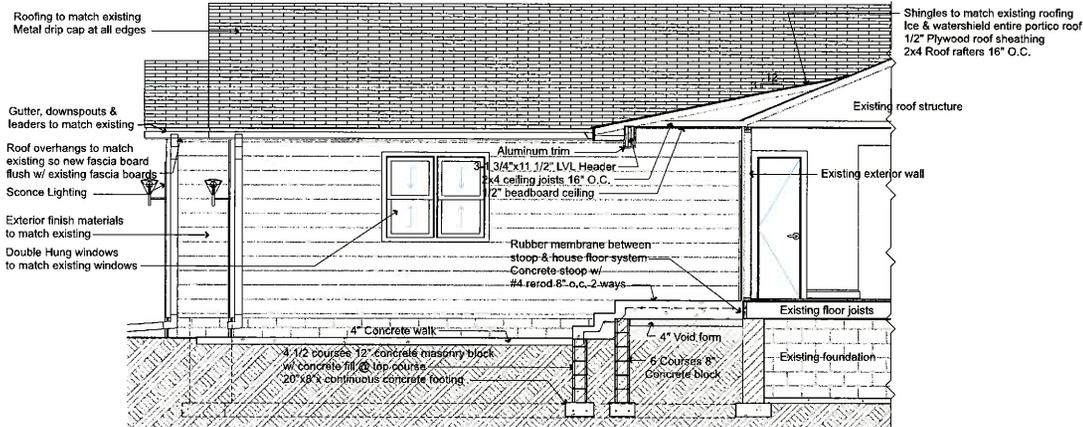
Front Garage Wall Framing

SCALE: 1/4" = 1'-0"



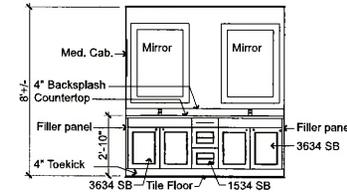
Laundry Folding Area

SCALE: 1/4" = 1'-0"



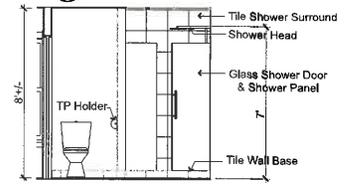
Portico Section

SCALE: 1/4" = 1'-0"



M. BATH VANITIES

SCALE: 1/4" = 1'-0"



M. Bath Shower

SCALE: 1/4" = 1'-0"

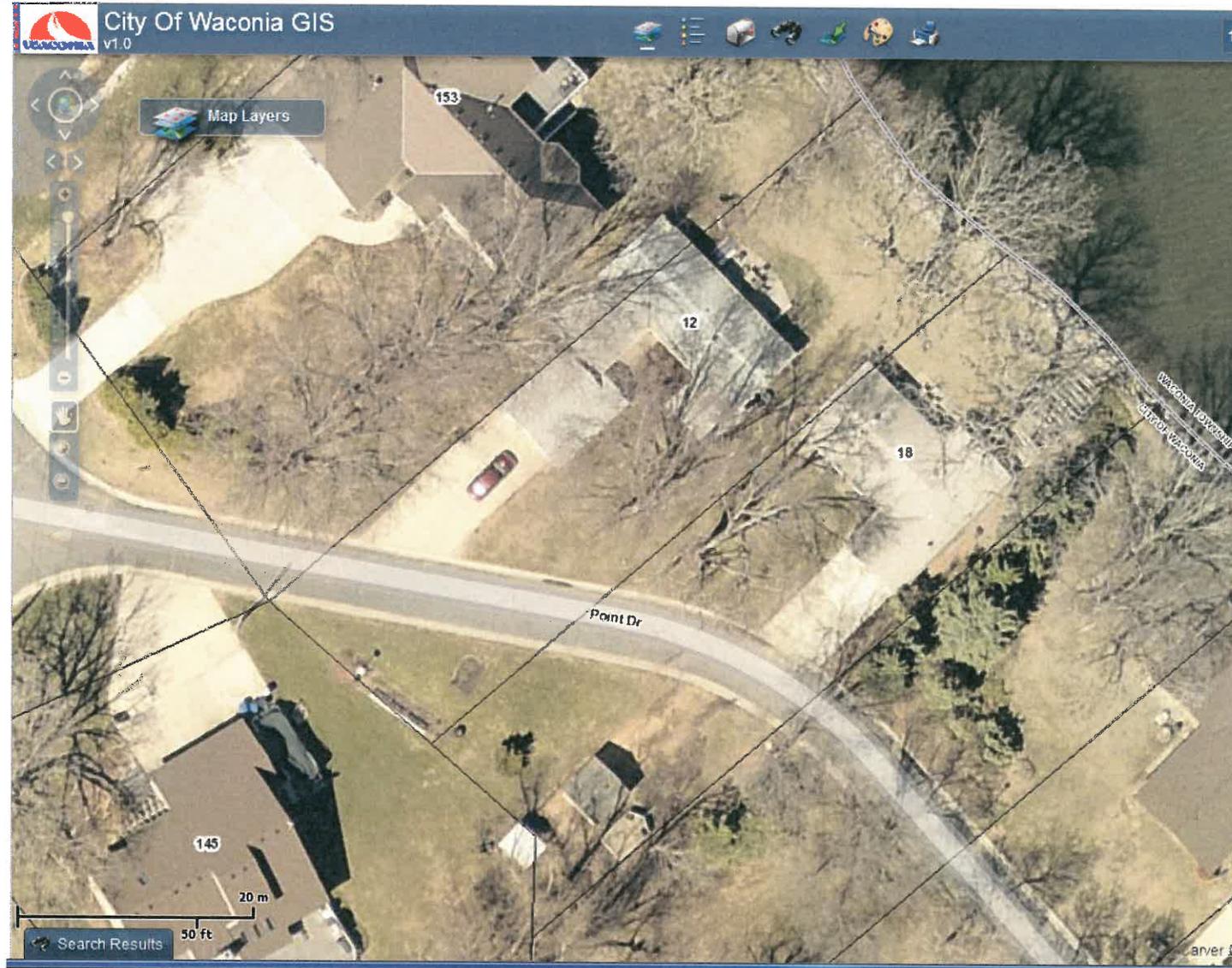
WINDOW SCHEDULE					
ID	SIZE		TYPE	MATERIAL	NOTES
	WIDTH	HEIGHT			
W101	2'-10 3/8"	5'	Dbl H	Vinyl: White	
W102	2'-10 3/8"	5'	Dbl. Hg.	Vinyl: White	
W103	2'-10 3/8"	5'	Dbl. Hg.	Vinyl: White	
W104	2'-10 3/8"	5'	Dbl. Hg.	Vinyl: White	
W105	2'-4 3/8"	5'	Dbl. Hg.	Vinyl: White	
W106	2'-4"	4'	Dbl. Hg.	Vinyl: White	
W107	2'-4"	4'	Dbl. Hg/	Vinyl: White	

Window Schedule

SCALE: 1/4" = 1'-0"

Chic Hansson Design
 1000 Highway 101, Suite 101, Waconda, MN 55397
 Project No. _____
 Release Dates: 2/9/16
 Remarks: _____
 SECTIONS & INTERIOR ELEVATIONS
 MacThomas Residence Remodel
 18 Point Dr.
 Waconda, Mn. 55397
 Page
 A.6

map



LEGAL DESCRIPTION:

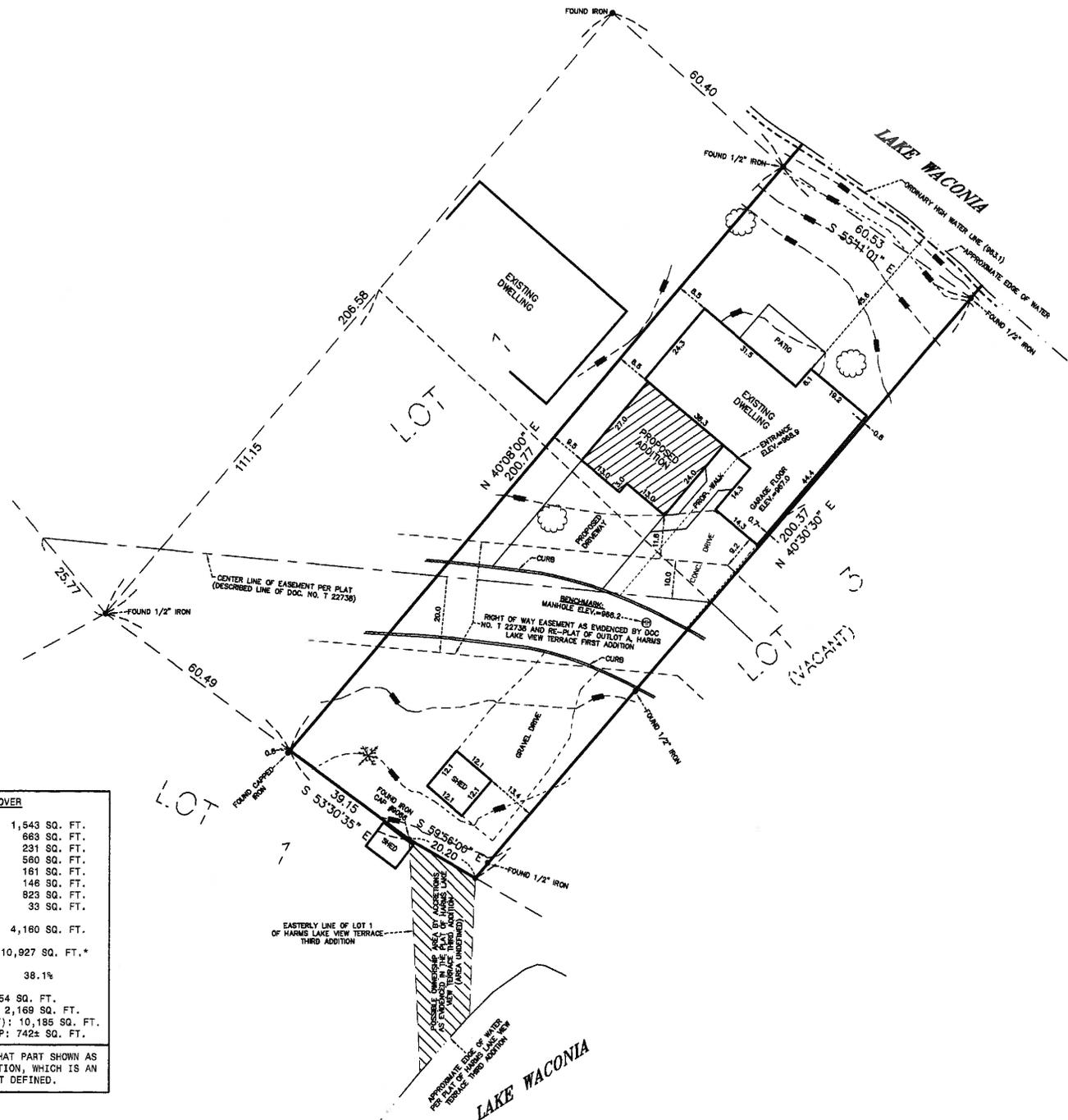
Lot 2, Re-plat of Outlot A, Harms Lake View Terrace First Addition, Carver County, Minnesota.

SCOPE OF WORK & LIMITATIONS:

- Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
- Showing the location of observed existing improvements we deem necessary for the survey.
- Setting survey markers or verifying existing survey markers to establish the corners of the property.
- Existing building dimensions and setbacks measured to outside of siding or stucco.
- Showing and tabulating impervious surface coverage of the lot for your review and for the review of such governmental agencies that may have jurisdiction over these requirements to verify they are correctly shown before proceeding with construction.
- Showing elevations on the site at selected locations to give some indication of the topography of the site. We have also provided a benchmark for your use in determining elevations for construction on this site. The elevations shown relate only to the benchmark provided on this survey. Use that benchmark and check at least one other feature shown on the survey when determining other elevations for use on this site or before beginning construction.
- While we show a proposed location for this home or addition, we are not as familiar with your proposed plans as you, your architect, or the builder are. Review our proposed location of the improvements and proposed yard grades carefully to verify that they match your plans before construction begins. Also, we are not as familiar with local codes and minimum requirements as the local building and zoning officials in this community are. Be sure to show this survey to said officials, or any other officials that may have jurisdiction over the proposed improvements and obtain their approvals before beginning construction or planning improvements to the property.

STANDARD SYMBOLS & CONVENTIONS:

"●" Denotes iron survey marker, set, unless otherwise noted.

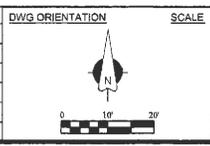


EXISTING HARDCOVER		PROPOSED HARDCOVER	
HOUSE	1,543 SQ. FT.	HOUSE	1,543 SQ. FT.
PATIO	231 SQ. FT.	PROPOSED ADDITION	669 SQ. FT.
CONCRETE DRIVE	328 SQ. FT.	PATIO	231 SQ. FT.
SHED	146 SQ. FT.	PROPOSED CONC. DRIVE	580 SQ. FT.
GRAVEL DRIVE	823 SQ. FT.	PROPOSED CONC. WALK	161 SQ. FT.
STREET (OUTSIDE EASEMENT)	33 SQ. FT.	SHED	146 SQ. FT.
TOTAL EXISTING HARDCOVER	3,104 SQ. FT.	GRAVEL DRIVE	823 SQ. FT.
LOT AREA (TO O.H.W. LINE)	10,927 SQ. FT.*	STREET (OUTSIDE EASEMENT)	33 SQ. FT.
LOT COVERAGE	28.4%	TOTAL PROPOSED HARDCOVER	4,180 SQ. FT.
TOTAL LOT AREA: 12,354 SQ. FT.		LOT AREA (TO O.H.W. LINE)	10,927 SQ. FT.*
AREA OF LOT IN EASEMENT: 2,169 SQ. FT.		LOT COVERAGE	38.1%
LOT AREA (EXCLUDING EASEMENT): 10,185 SQ. FT.		TOTAL LOT AREA: 12,354 SQ. FT.	
AREA OF POSSIBLE OWNERSHIP: 742± SQ. FT.		AREA OF LOT IN EASEMENT: 2,169 SQ. FT.	
		LOT AREA (EXCLUDING EASEMENT): 10,185 SQ. FT.	
		AREA OF POSSIBLE OWNERSHIP: 742± SQ. FT.	

* NOTE: LOT AREA INCLUDES THAT PART SHOWN AS POSSIBLE OWNERSHIP BY ACCRETION, WHICH IS AN APPROXIMATION AND NOT DEFINED.

* NOTE: LOT AREA INCLUDES THAT PART SHOWN AS POSSIBLE OWNERSHIP BY ACCRETION, WHICH IS AN APPROXIMATION AND NOT DEFINED.

DATE	REVISION DESCRIPTION
5/27/16	TO SHOW ADDITIONAL LOT AREA BY ACCRETION



CLIENT/JOB ADDRESS

CHUCK MACHTEMES

18 POINT DR.
WACONIA, MN

Advance
Surveying & Engineering, Co.

Wayne W. Probst
#43503
LICENSE NO.
MAY 5, 2016
DATE

34 5300 South Hwy. No 101
Minnetonka, Minnesota 55345
Phone (952) 474-7664
Web: www.advanceur.com

DATE SURVEYED:	SHEET TITLE
MAY 2, 2015	PROPOSED SURVEY
DATE DRAFTED:	DRAWING NUMBER
MAY 5, 2016	160237 WP

SHEET NO.

S1

SHEET 1 OF 1



REQUEST FOR PLANNING COMMISSION ACTION

Meeting Date:	July 7 th , 2016
Item Name:	Public Hearing - Zoning Map Amendment submitted by Oppidan, Inc. for the properties located at 10590 and 10594 10 th Street West
Originating Department:	Community Development
Presented by:	Lane Braaten, Community Development Director

Previous Council Action (if any):

Item Type (X only one):	Consent		Regular Session	<input checked="" type="checkbox"/>	Discussion Session	
--------------------------------	---------	--	-----------------	-------------------------------------	--------------------	--

RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Open Public Hearing.
Motion to Close the Public Hearing.
Motion recommending either approval or denial of the proposed Zoning Map Amendment to rezone the subject parcels from A, Agricultural Residential District to B-1, Highway Business District.

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

BACKGROUND:

Applicant: Oppidan, Inc.
Owner: Robert G Sudheimer Trust
Address(es): 10590 and 10594 10th Street West
P.I.D. #(s): 750235100 and 750235200
Legal Description: See attached legal descriptions for both properties
Zoning District: A, Agricultural District
Comprehensive Plan Designation: C, Commercial

REQUEST:

The City has received a Zoning Map Amendment application from Oppidan, Inc. (the “Applicant”) for the properties located at 10590 and 10594 10th Street West (the “Subject Properties”). The applicant is requesting approval to rezone the subject properties from their current zoning of A, Agricultural District to B-1, Highway Business District.

APPLICABLE ORDINANCE PROVISIONS:

1. Section 900.05, Subd. 2.F – B-1, Highway Business District
2. Section 900.05, Subd. 2.N – A, Agricultural District
3. Section 900.12, Subd. 6 – Amendments

EXISTING CONDITIONS:

The subject parcels, located at 10590 and 10594 10th Street West, are currently undeveloped and located within the Waconia City limits (see attached location map). Specifically, the properties are located south and east of the intersection of Hwy. 5 and County Road 10. Most recently the properties were used as a staging area for construction equipment and materials during the Hwy. 5, Cherry Street and 10th Street road construction projects that are in the final stages of being completed.

ZONING MAP AMENDMENT ANALYSIS AND PLANNING CONSIDERATIONS:

The applicant is proposing an amendment to the City of Waconia Zoning Map, which would rezone the subject parcels from A, Agricultural to B-1, Highway Business District. The proposed amendment is consistent with the City’s Comprehensive Plan, which guides the properties for commercial use.

PUBLIC NOTICE/COMMENT

The notices were published in the WACONIA PATRIOT on June 23rd, 2016 and posted at Waconia City Hall. Individual notices were mailed to all property owners within 350 feet of the subject parcel. As of the date and time of this report the City has not received any comments regarding the proposed Zoning Map Amendment.

CONCLUSION / RECOMMENDATION

The Planning Commission should hold a public hearing and make a recommendation to the City Council regarding the Zoning Map Amendment application submitted by Oppidan, Inc. Upon recommendation by the Planning Commission this item will be forwarded to the City Council for review at their upcoming meeting scheduled for July 11th, 2016.

ATTACHMENTS:

Attachment 1: Zoning Amendment Application with Submittal Information (4 pages)

Attachment 2: Location Map (1 page)

Attachment 3: Public Hearing Notice (1 page)

Attachment 4: Zoning Map - Existing (1 page)

Attachment 5: Zoning Map – Proposed (1 page)

Attachment 6: Land Use Plan Map – City of Waconia Comp Plan (1 page)



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135
www.waconia.org

APPLICANT INFORMATION

1. Owner's Name: SUDHEIMER TRUST
2. Address of Property: 10590-10594 Tenth St W
3. Legal Description: Attached
4. Applicant's Name: Opp, Dan, Inc
5. Mailing Address: 400 WATER ST, SUITE 200, EXCELSIOR, MN 55331
6. Daytime Phone(s): 952-294-1243
7. Email Address: dan@opp.dan.com

The City will distribute copies & appropriate information to applicant via email

OFFICE USE ONLY

Date Received: 6/1/16

Fee: \$ 875⁰⁰
Receipt #: 0248285



CITY OF WACONIA
201 South Vine Street
Waconia, MN 55387
Phone: (952) 442-2184 Ext. 2
Fax (952) 442-2135

REZONING APPLICATION

1. Size of Property to be Rezoned (square feet): Approximately 7.6 Acres or 331,000 S.F.
2. Present Zoning Classification: AG - Agriculture
3. New Zoning Classification Desired: B-1 Highway Business
4. Reason for Request: SEE ATTACHED NARRATIVE
5. Description of Request – explain how the proposed zoning change would affect surrounding properties and traffic patterns on abutting roadways: SEE ATTACHED NARRATIVE

THE FOLLOWING INFORMATION MUST BE SUBMITTED IN ORDER TO CONSIDER THE APPLICATION COMPLETE

1. Payment of application fee (\$375) and escrow payment of \$500.00. Additional consulting review fees may apply, such as civil engineering and legal counsel.
2. Survey of property to be rezoned along with general location map.
3. Proposed uses anticipated on rezoned property.
4. Indicate existing uses on adjacent properties.
5. Any studies or reports that support a justification to rezone the property.

Applicant's Signature: 
Printed Name: Paul Tucci

Date: 5-25-16



400 Water Street · Suite 200 · Excelsior, MN 55331 · T: 952.294.0353 · F: 952.294.0151 · www.oppidan.com

May 24, 2016

Mr. Lane Braaten, Community Development Director
City of Waconia
201 South Vine Street
Waconia, MN 55387

RE: Sudheimer Property Trust Re-Zoning

Dear Lane:

Attached for your processing is the application for Re-Zoning of the Sudheimer Property Trust land, located along Highway 5 and east of Tenth Street (CR10).

The request is to change the zoning from the current zoning of A- Agriculture to B-1 Highway Business. The request is being made to bring the use in to better conformity with the surrounding land uses and to allow for future development of the parcel for retail goods and services as well as potential office, hotel and restaurant uses.

The requested zoning is compatible with the surrounding zoning classifications. Property directly east and west of the site are currently zoned and portions developed as B-1 zoning uses. The property directly south of the site is currently zoned I-2. Across Highway 5, properties are zoned B-1 for everything except the Ridgeview Campus, which is zoned B-4. This request would be consistent with the surrounding property uses.

Traffic to and from the site has already been accounted for. A new intersection at Cherry St. and Highway 5, with traffic signals, is installed and operational. Existing traffic controls are in place at the intersection of Highway 5 and County Road 10 and at County Road 10 and Marketplace Dr. Additionally, Marketplace Drive/10th Street is being extended on the south side of the property to connect to the extended Chery St. All of the improvements completed will allow for this parcel to develop in a B-1 Zoning District.

The survey for the property is underway. Once it is completed, a copy will be provided. A check in the amount of \$800 is included with this application for the application fee and escrow.

If there are any other questions, please feel free to contact me.

Sincerely,



Paul J. Tucci

EXHIBIT "A"

File No.: **NCS-790561-MPLS**

Policy No.:

Real property in the City of Waconia, County of Carver, State of Minnesota, described as follows:

Tract 1:

The Northwest Quarter of the Southeast Quarter of Section 23, Township 116 North, Range 25 West, EXCEPTING therefrom the following tracts of land:

1. That part thereof platted as Sudheimer Industrial Park 2nd Addition.
2. That part thereof lying northwesterly of the former southeasterly right-of-way of the Chicago and Northwestern Railway Company.
3. That part which lies southwesterly of the southwesterly line of the County State Aid Highway Number 32 right of way.

Tract 2:

A strip of land One Hundred (100) feet in width, the same being Fifty (50) feet in width on each side of the centerline of the main track (now removed) of the Minneapolis & St. Louis Railway Company (now the Chicago and North Western Transportation Company) as said main track centerline was originally located over and across the Northwest Quarter of the Southeast Quarter of Section Twenty-three (23), Township One Hundred Sixteen (116), Range Twenty-five (25).

Carver County, Minnesota
Abstract Property

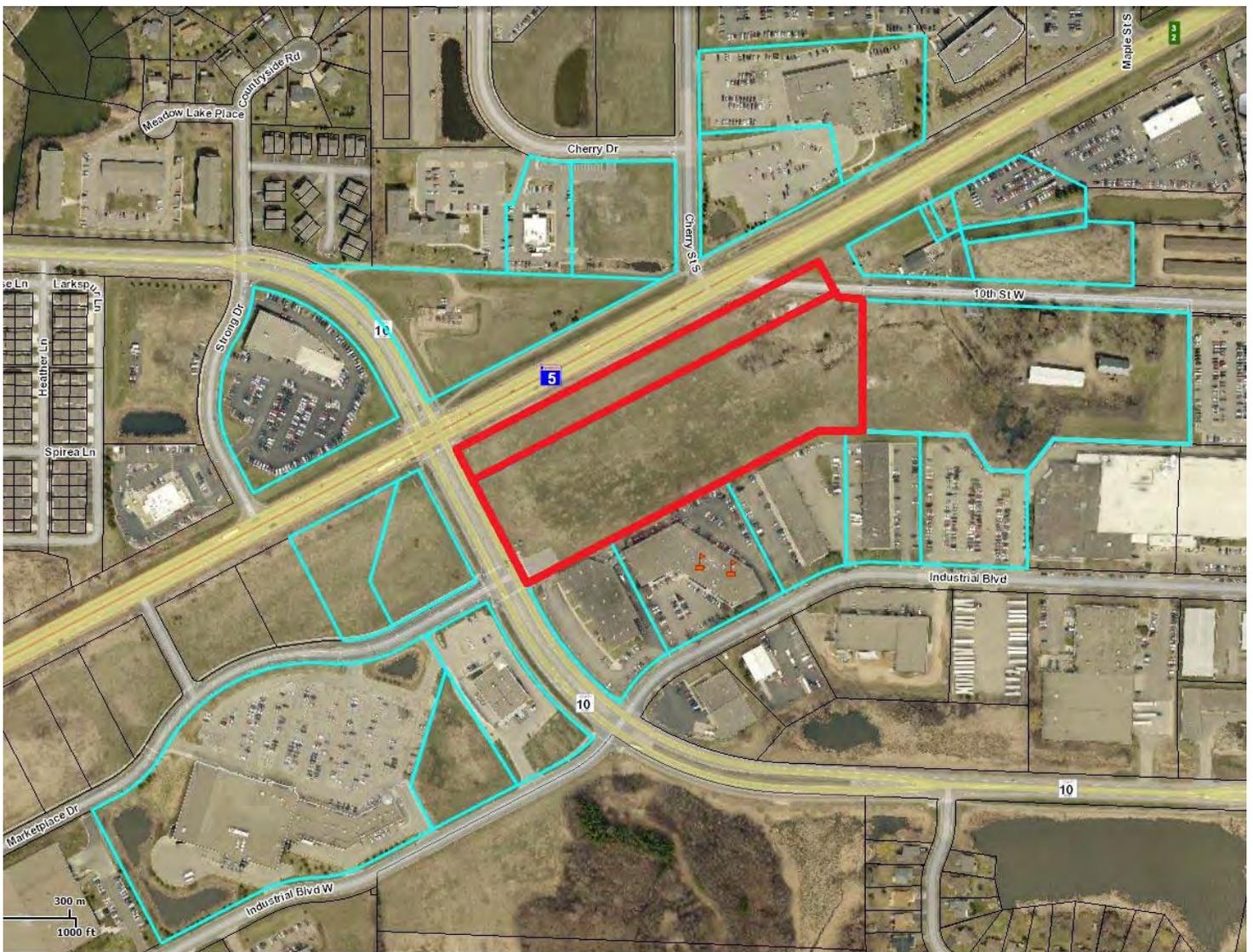


Public Hearing Notice Map

Subject Property: 10590 & 10594 10th Street West

The attached public hearing notification is being mailed to all properties within 350 ft. of the subject properties pursuant to City Code Section 900.12, Subd. 6, D.

The location of the subject properties are outlined in red on the aerial image below and the properties being notified are outlined in blue.



CITY OF WACONIA, MN
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Waconia, MN, will hold a public hearing on Thursday, July 7th, 2016 at 6:30 p.m., at the Waconia City Hall, 201 South Vine Street, Waconia, MN, to consider a Rezoning application by Oppidan, Inc. for the property legally described as follows:

Tract 1:

The Northwest Quarter of the Southeast Quarter of Section 23, Township 116 North, Range 25 West, EXCEPTING therefrom the following tracts of land:

1. That part thereof platted as Sudheimer Industrial Park 2nd Addition.
2. That part thereof lying northwesterly of the former southeasterly right-of-way of the Chicago and Northwestern Railway Company.
3. That part which lies southwesterly of the southwesterly line of the County State Aid Highway Number 32 right of way.

Tract 2:

A strip of land One Hundred (100) feet in width, the same being Fifty (50) feet in width on each side of the centerline of the main track (now removed) of the Minneapolis & St. Louis Railway Company (now the Chicago and North Western Transportation Company) as said main track centerline was originally located over and across the Northwest Quarter of the Southeast Quarter of Section Twenty-three (23), Township One Hundred Sixteen (116), Range Twenty-five (25).

The property includes approximately 10 acres of land located south and east of the intersection of CSAH 10 and MN Hwy. 5. The request is for the property to be rezoned from A, Agricultural District to B-1, Highway Business District.

Pertinent information pertaining to this request is available at City Hall. Interested persons may submit written or oral comments pertaining to this matter any time prior to the hearing, or at the hearing on Thursday, July 7th, 2016. Written comments will be distributed to the Planning Commission for review and consideration. Please submit written comments by mail, email or in person as follows:

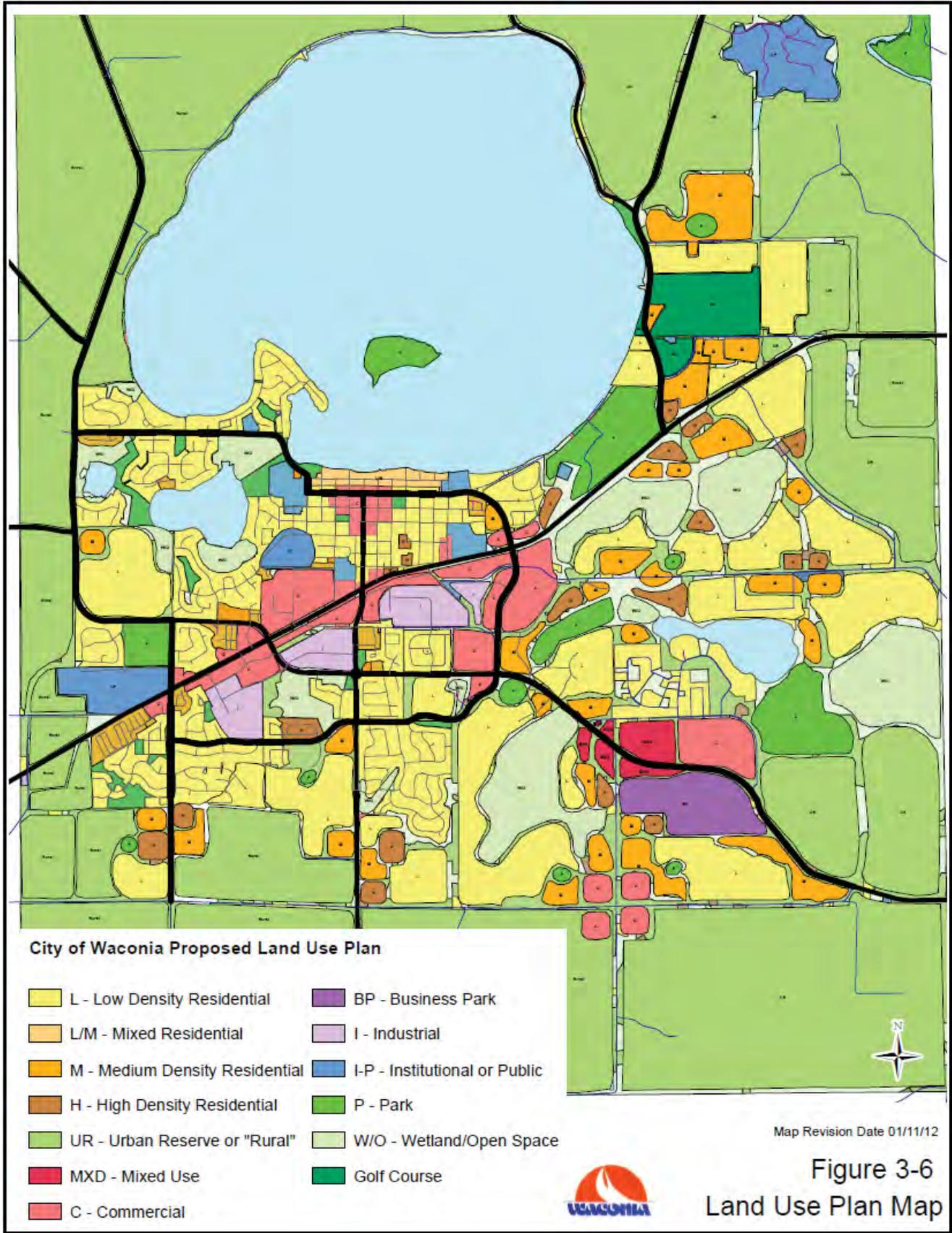
Mail/in person: Lane L. Braaten, 201 South Vine Street, Waconia, MN 55387

Email: lbraaten@waconia.org

By: WACONIA PLANNING COMMISSION

ATTEST: Lane L. Braaten, Community Development Director

(Published in the June 23rd, 2016 Waconia Patriot newspaper)





REQUEST FOR PLANNING COMMISSION REVIEW

Meeting Date:	July 7 th , 2016					
Item Name:	Temporary Family Health Care Dwellings					
Originating Department:	Community Development					
Presented by:	Lane Braaten, Community Development Director					
Previous Council Action (if any):						
Item Type (X only one):	Consent		Regular Session	<input checked="" type="checkbox"/>	Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>						

No formal action is required. This is a discussion item which will be brought to the City Council at a future work session.

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

Please see the attached document from the League of Minnesota Cities regarding temporary family health care dwellings. The information states that “On May 12, 2016, Governor Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.” As such, as of September 1st, 2016 Cities will be required to issue permits for said temporary dwelling units unless said City opts out of the new law.

Staff requests that the Planning Commission review the attached information and provide some guidance regarding the option to opt out of the new State Law. Subsequent to the initial discussion between staff and the Planning Commission it is staff’s intention to bring this topic to the City Council at an upcoming work session for further discussion.

ATTACHMENTS:

1. League of Minnesota Cities – Temporary Family Health Care Dwellings of 2016 (7pages)

Temporary Family Health Care Dwellings of 2016

Allowing Temporary Structures – What it means for Cities

Introduction:

On May 12, 2016, Gov. Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.¹ Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.²

Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. When analyzing whether or not to opt out, cities may want to consider that:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

¹ [2016 Laws, Chapter 111](#).

² Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that individual's power of attorney sign the permit application or a consent to release his or her data.
- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties³. Cities should consider whether there is an interplay between these two statutes.

Do cities need to do anything to have the new law apply in their city?

No, the law goes into effect Sept. 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances.

Do cities lose the option to opt out after the Sept. 1, 2016 effective date?

No, the law does not set a deadline for opting out, so cities can opt out after Sept. 1, 2016. However, if the city has not opted out by Sept. 1, 2016, then the city must not only have determined a permit fee amount⁴ before that date (if the city wants to have an amount different than the law's default amount), but also must be ready on that date to accept applications and process the permits in accordance with the short timeline required by the law. Cities should consult their city attorney to analyze how to handle applications submitted after Sept. 1, 2016, but still pending at the time of a later opt out.

What if a city already allows a temporary family health care dwelling as a permitted use?

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

What process should the city follow if it chooses to opt out of this statute?

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.⁵

³ See Minn. Stat. §394.307

⁴ Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

⁵ For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the

Does the League have a model ordinance for opting out of this program?

Yes. Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

Can cities partially opt out of the temporary family health care dwelling law?

Not likely. The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

Can a city adopt pieces of this program or change the requirements listed in the statute?

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

What is required in an application for a temporary family health care dwelling permit?

The mandatory application requests very specific information including, but not limited to:⁶

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”⁷

statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

⁶ New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

⁷ This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.”

- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

Who can host a temporary family health care dwelling?

Placement of a temporary family health care dwelling can only be on the property where a “caregiver” or “relative” resides. The statute defines caregiver as “an individual, 18 years of age or older, who: (1) provides care for a mentally or physically impaired person; and (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.” The definition of “relative” includes “a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships.”

Is this program just for the elderly?

No. The legislature did not include an age requirement for the mentally or physically impaired dweller.⁸

Who can live in a temporary family health care dwelling and for how long?

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as “mentally or physically impaired,” defined as “a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state.” The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

⁸ The law expressly exempts a temporary family health care dwelling from being considered “housing with services establishment”, which, in turn, results in the 55 or older age restriction set forth for “housing with services establishment” not applying.

What structures qualify as temporary family health care dwellings under the new law?

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;
- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means⁹);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter [1360](#) (prefabricated buildings) or [1361](#) (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”¹⁰; and
- Must contain a backflow check valve.¹¹

Does the State Building Code apply to the construction of a temporary family health care dwelling?

Mostly, no. These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

What health, safety and welfare requirements does this new law include?

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

What local ordinances and zoning apply to a temporary health care dwelling?

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings.

⁹ The Legislature did not provide guidance on what represents “other comparable means”.

¹⁰ ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

¹¹ New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city's other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

What permit process should cities follow for these permits?

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame within which the local governmental unit can make a decision on the permit. Due to the time sensitive nature of issuing a temporary dwelling permit, the city does not have to hold a public hearing on the application and has only 15 days (rather than 60 days) to either issue or deny a permit. For those councils that regularly meet only once a month, the law provides for a 30-day decision. The law specifically prohibits cities from extending the time for making a decision on the permit application. The new law allows the clock to restart if a city deems an application incomplete, but the city must provide the applicant written notice within five business days of receipt of the application identifying the missing information.

Can cities collect fees for these permits?

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance

Can cities inspect, enforce and ultimately revoke these permits?

Yes, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

How should cities handle data it acquires from these permits?

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state "that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living", without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

Should the city consult its city attorney?

Yes. As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

Where can cities get additional information or ask other questions.

For more information, contact Staff Attorney Pamela Whitmore at pwhitmore@lmc.org or LMC General Counsel Tom Grundhoefer at tgrundho@lmc.org. If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.