

**CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT COMMUNICATION**

Meeting Date: November 1, 2017

Item: Furry Friends Refuge, NE corner of S. 41st Street and Mills Civic Parkway – Vary the side yard setback from 50 feet to 11 feet for the construction of an animal shelter – Furry Friends Refuge (VAR-003657-2017)

Requested Action: Adopt Findings Regarding Setback Variance

Case Advisor: Brian S. Portz, AICP *BP*

Applicant's Request: The applicant, Furry Friends Refuge, is requesting a 39 foot variance of the eastern side yard setback for property located at the NE corner of S. 41st Street and Mills Civic Parkway (3551 Mills Civic Parkway). The variance would reduce the side yard setback from 50 feet to 11 feet. The applicant has submitted information noting the unique shape of the lot and existing utility easements on the north and west sides of the property as rationale for the variance need.

History: The subject property is currently vacant. The property was annexed into the City in 1957. The S & F/Karp PUD was approved in 1991 with amendments in 1995, 1999, 2006, 2008 and 2015. The amendments in 2006 and 2008 allowed for the development of the Chapel Ridge Apartments and Vineyard Ridge Townhomes. In 2015, the architectural section of the PUD was amended to allow commercial construction on the property with a more modern look that was not residential in character as the original PUD required. In January of 2017, a land use only review of the property was approved by the Board of Adjustment for the use of the property for an animal shelter. The site plan for the property is currently being reviewed by staff and will be brought forward soon for approval by the Plan & Zoning Commission and City Council.

Staff Review and Comment: Staff notes the following:

Utility Easements: This site is encumbered by utility easements on the north and west sides of the property. Along the north property line there is a 15' gas main easement, a 10' underground electric easement, and 30' of a 100' aerial power line easement. These easements overlap one another for a total of 30' along the north property that cannot be constructed upon. Additionally, running diagonally through the western ¼ of the site is a 50' petroleum pipeline easement. The owners of these easements limit what can be constructed within them. For example, none of them allow building construction, some don't allow landscaping, and others limit how much paving can be constructed over the easement. The petroleum pipeline has very strict guidelines of what can be constructed over their easement. In addition to the easements on the site, there is also a 60' landscape buffer requirement along Mills Civic Parkway which also limits where the building can be located.

Building Phases: The Furry Friends animal shelter is proposed to be constructed in two phases. The first phase will consist of the animal shelter and administrative offices. The second phase will include a future animal control wing on the south side of the building. The first phase of the building construction will result in the building being 30.29' from the east property line. The future animal control wing of the second phase will be 11.13' from the east property line. To ensure development of both phases can be accommodated as intended, the full variance amount is being requested. A condition of approval is recommended that allows the entitlement of the variance necessary for the second phase to remain valid until construction of the second phase, rather than expiring within one year.

Noticing Information: On October 19, 2017, a notice of the November 1, 2017, Board of Adjustment public hearing was published in the *Des Moines Register*. Notice of this public hearing was mailed to all surrounding property owners within 370 feet of the subject property on October 13, 2017.

Property Owner/Applicant:

Furry Friends Refuge
1211 Grand Avenue
West Des Moines IA 50265

Attachments:

Attachment A	-	Board of Adjustment Resolution
Exhibit A	-	Conditions of Approval
Exhibit B	-	Findings
Attachment B	-	Location Map
Attachment C	-	Site Plans
Attachment D	-	Findings from the Applicant
Attachment E	-	Findings from Staff
Attachment F	-	Email in Support of the Variance

Prepared by: B. Portz, West Des Moines Development Services PO Box 65320 West Des Moines IA 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

RESOLUTION

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, (APPROVING OR DENYING) _____ THE VARIANCE REQUEST (VAR-003657-2017) OF A 39 FOOT VARIANCE OF THE REQUIRED 50 FOOT SIDE YARD SETBACK FOR PROPERTY LOCATED AT 3551 MILLS CIVIC PARKWAY FOR PURPOSES OF LOCATING AN ANIMAL SHELTER ON THE PROPERTY

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Furry Friends Refuge, has requested approval of a variance from Title 9, *Zoning*, Chapter 7, *Setback and Bulk Density Regulations*, Subsection 4, *Setback and Bulk Density Regulations*, Table 7.8 *Bulk Regulations for Principal and Accessory Structures in Commercial Districts*, for a variance of thirty nine (39) feet of the required fifty foot (50') side yard setback to locate an animal shelter on property located at 3551 Mills Civic Parkway and legally described as:

BEGINNING AT THE SE CORNER OF LOT 1, CHAPEL RIDGE ADDITION, THENCE SOUTH 192.04 FEET TO THE NW CORNER OF PARCEL D, BOOK 7446, PAGE 964, EAST 91.06 FEET, SOUTH 100 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF MILLS CIVIC PARKWAY, WEST 91.92 FEET TO THE SOUTHWEST CORNER OF PARCEL D, WEST 90.2 FEET, SOUTHWESTERLY 430.33 FEET, NORTHWESTERLY 37.63 FEET, NORTHWESTERLY 77 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SOUTH 41ST STREET TO THE SOUTHERLY CORNER OF LOT 1, NORTHEAST 655.63 FEET TO THE POINT OF BEGINNING, NW ¼ NE ¼ AND NE ¼ NE ¼ SECTION 17-78-25, CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, on November 1, 2017, the Board of Adjustment held a duly-noticed public hearing to consider the application for a variance (VAR-003657-2017);

WHEREAS, based upon a review of the submitted variance request, the Board of Adjustment finds **(In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings)** as attached at Exhibit B;

NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. A Variance Request (VAR-003657-2017), for a thirty nine (39) foot variance from the fifty (50) foot side yard building setback requirement for property locally known at 3551 Mills Civic Parkway and legally described above to allow the construction of an animal shelter in phases is _____
(approved or denied).

PASSED AND ADOPTED on November 1, 2017

Michael R. Blaser, Chair

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on November 1, 2017, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

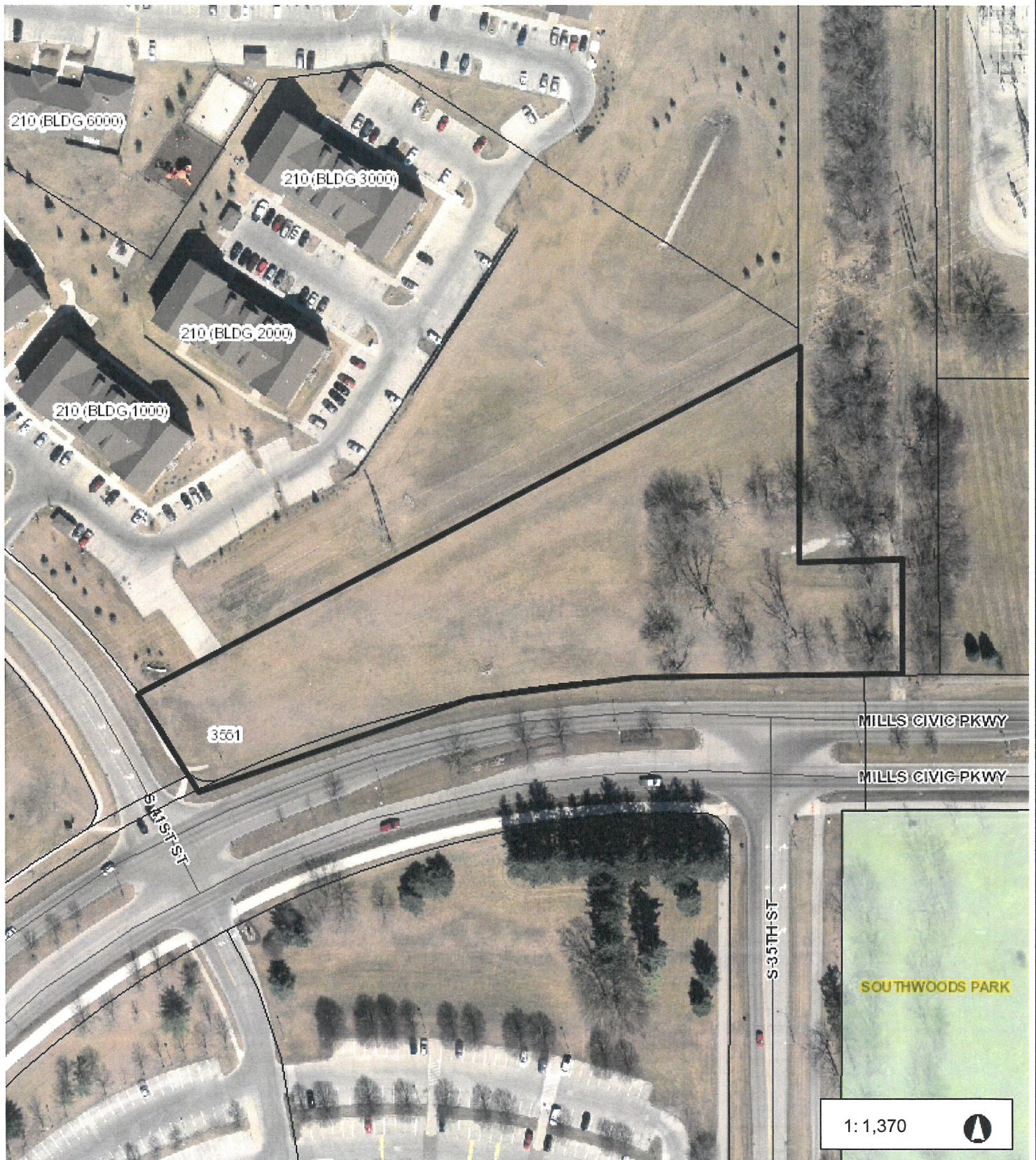
Exhibit A
Conditions of Approval

1. The Board of Adjustment authorizing that the variance necessary for construction of the phase two building addition remain valid until such time that construction of phase two is initiated. The variance shall only apply to construction as indicated on the 2017 Site Plan application. Any alteration from that illustrated in the site plan as approved by the West Des Moines City Council will require specific Board of Adjustment approval prior to release of the associated building permit for phase two construction.

**Exhibit B
Findings**



Furry Friends Adoption Center Location Map



228.3 0 114.14 228.3 Feet

NAD_1983_StatePlane_Iowa_South_FIPS_1402_Feet
© City of West Des Moines, Iowa

Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

CITY OF WEST DES MOINES
VARIANCE APPLICATION FINDINGS

Please address each required finding in the space provided or attach more sheets if necessary to prove to the Board of Adjustment that the finding can be made.

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable sub-area plan.

Applicant response- Furry Friends has provided community-based animal welfare services to West Des Moines and its neighboring partners for many years. The current comprehensive plan of support commercial is intended to offer services that support the local area. Furry Friends additionally has entered in to a 28E agreement with the cities of West Des Moines, Clive, and Urbandale to provide animal control services and frequently coordinates with animal control officers who are a part of the West Des Moines police department. The proposed use is in keeping with the many neighboring community service centers such as the police department, library, and city hall within the area. This site has already gone through one conditional use permit application process and its use has been approved by the board of adjustment with appropriate considerations given to the specific property and use.

2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones.

Applicant Response--While the property is of reasonable size at 2.37 acres. The site is an unusually narrow shape which limits options as to layout of a building and needed parking and access. Making this shape exponentially more challenging is the myriad of utilities that run through the property as well as the sizeable setback required from Mills Civic Parkway (over half an acre of the property). This property has been considered for several projects in the past but has been deemed by other parties as too challenging and restricting. The building (both phase 1 and 2) being proposed would only take up 10% of the entire property and still runs in to issues requiring this variance to be pursued. It is an unusual property that would, without a variance, allow for less than 10% of the property for a building footprint. The property has easements for

an underground electrical line, an overhead electrical line, an underground gas line, and underground petroleum pipeline, as well as has a pre-existing agreement that an ingress/egress must be placed at a particular portion of the property. Very significant amounts of time have been expended by the applicant as well as the applicant's engineer and architect to alleviate the need for any requests for relief and to meet staff requirements for the site plan. After several attempted layouts, this plan involves the least amount of relief requested and seeks relief that causes no harm to any neighboring property and is supported by the property affected by the smaller setback.

3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest.

Applicant Response-While there was knowledge of some of the easements and challenges associated with the property at the time of purchase, the full extent of restrictions and complications was not able to be fully determined by either the applicant or the city until the development process was far along and significant investments had been made in engineering. While it was known that a pipeline existed running through a portion of the property, it was not known at the time of purchase that the pipeline is now owned by a different company who is imposing far stricter rules to allow any kind of development to occur over their easement. This company has recently attempted to apply restrictions to the city itself, attempting to require no landscaping in an area of double what they are actually entitled to restrict based on the easement. Prior to this new company, this applicant has verified from employees of the company as well as other affected parties that development was not met with such stringency.

Because of the agreement put in place from a prior party that requires an ingress/egress in an area that goes directly over the pipeline, the applicant has been forced to balance the pipeline's new stricter stance to approval and avoid attempting to place some of the parking within the easement of the pipeline which would allow the building to be placed further to the east of the

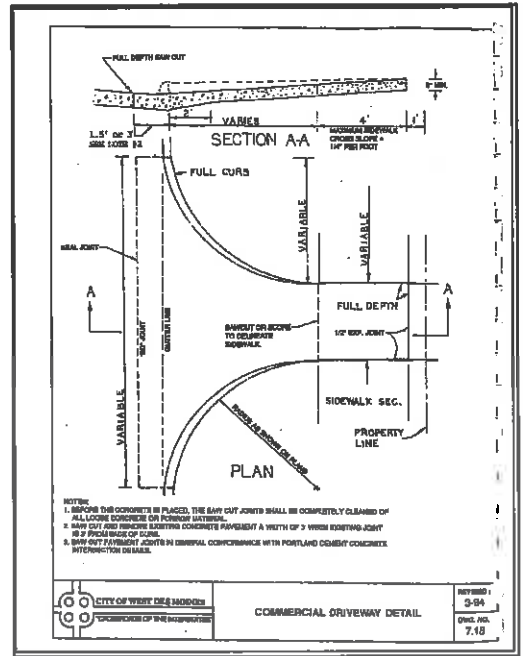
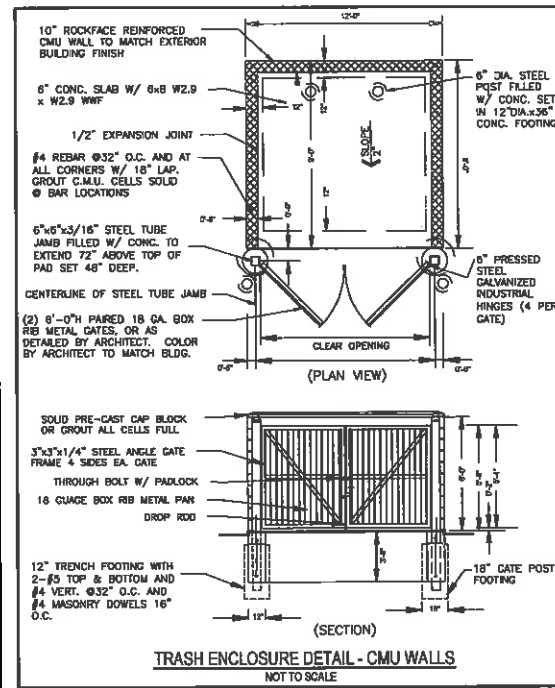
property. Given the extremely lax policies of prior owners of the pipeline, there would have been no way for the applicant to have foreseen how the pipeline's new policy would further restrict the already complex property. Additionally, though MidAmerican has been a fabulous neighbor to the applicant and has been supportive of the development and specifically of this variance. additional information learned since the applicant has owned the property has caused the applicant to need to make some additional modifications to move the development further from the northern easement boundaries which resulted in the building shifting further to the east.

4. That there have been no changes in the character of the site or its surrounding which detrimentally affect the environment.

Applicant response-Nothing has been done to the property since the applicant has taken possession and the building of this development would not adversely affect the environment and no requests in this variance would affect the environment.

5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

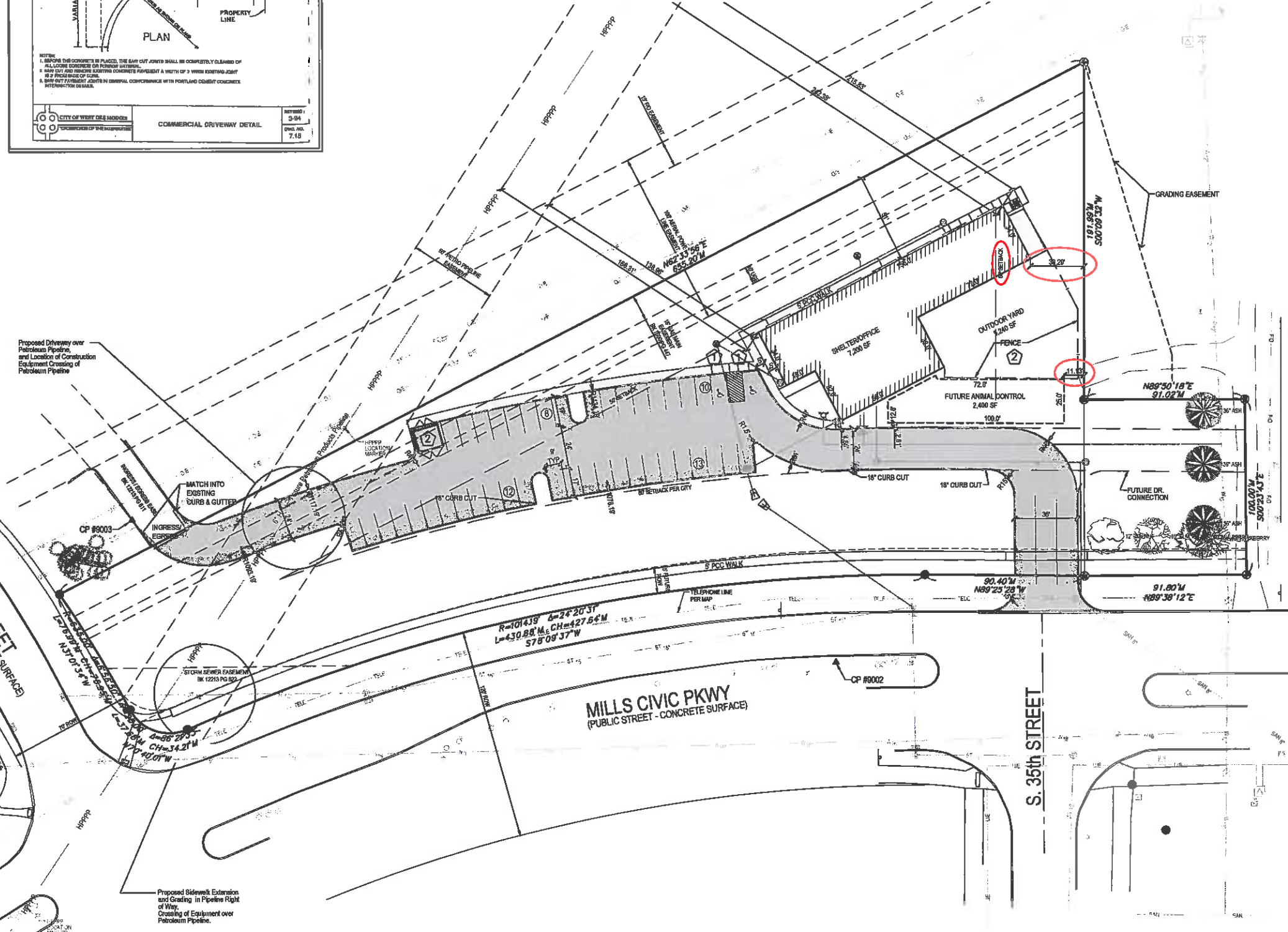
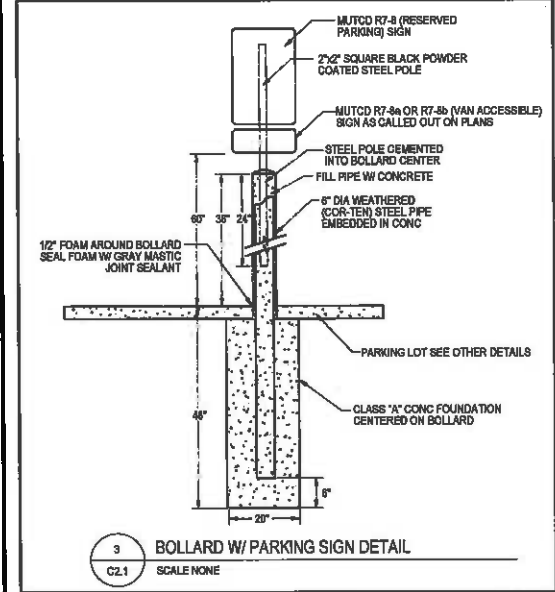
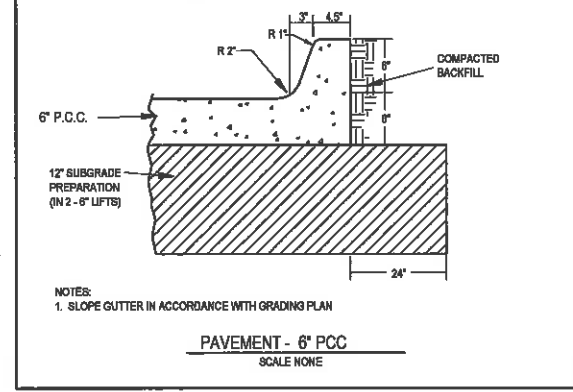
Applicant response--This variance would not adversely affect any neighboring property and would, in fact, minimize concerns raised by neighboring properties at the conditional use permit hearing. The variance requests that the building be allowed to shift further to the east. The eastern neighbor, MidAmerican, specifically indicated that it prefers the variance be approved as opposed to other more complex options that were suggested by the city and has been a wonderful and supportive neighbor to the project. Neighbors who voiced concerns are located to the west. By providing a variance allowing the building to be constructed closer to the east property line means that the building will be placed further away from properties that have expressed any concern. Given the odd shape that already exists of the eastern property line and the location of the existing development on the eastern neighbor's property, there will be no visual indication that a variance exists—granting this variance will not result in a property that appears out of line with existing zoning and comprehensive plan guidelines. No safety or health concerns will occur as a result of this variance.



- Keyed Notes:**
- ① HANDICAPPED SIGN ENCASE IN BOLLARD
 - ② TRASH ENCLOSURE
 - ③ 6" WOODEN SCREEN FENCE

- PAVING NOTES:**
1. Sawcut new pavement into squares between approximately 12' x 12' and 15' x 15'. Length shall not exceed 150% of width.
 2. Place 1/2" expansion joint material around all structures (manholes, junction boxes, poles, bollards, etc.) in pavement.
 3. Place Expansion joint material along walk next to building.

- PAVEMENT MARKING NOTES:**
1. Paint a 4" WHITE stripe line for all stalls and other markings as shown.



Bishop Engineering
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Des Moines, Iowa 50322-3625
Phone (515) 276-0667 Fax (515) 276-0417
Civil Engineering & Land Surveying
Established 1959

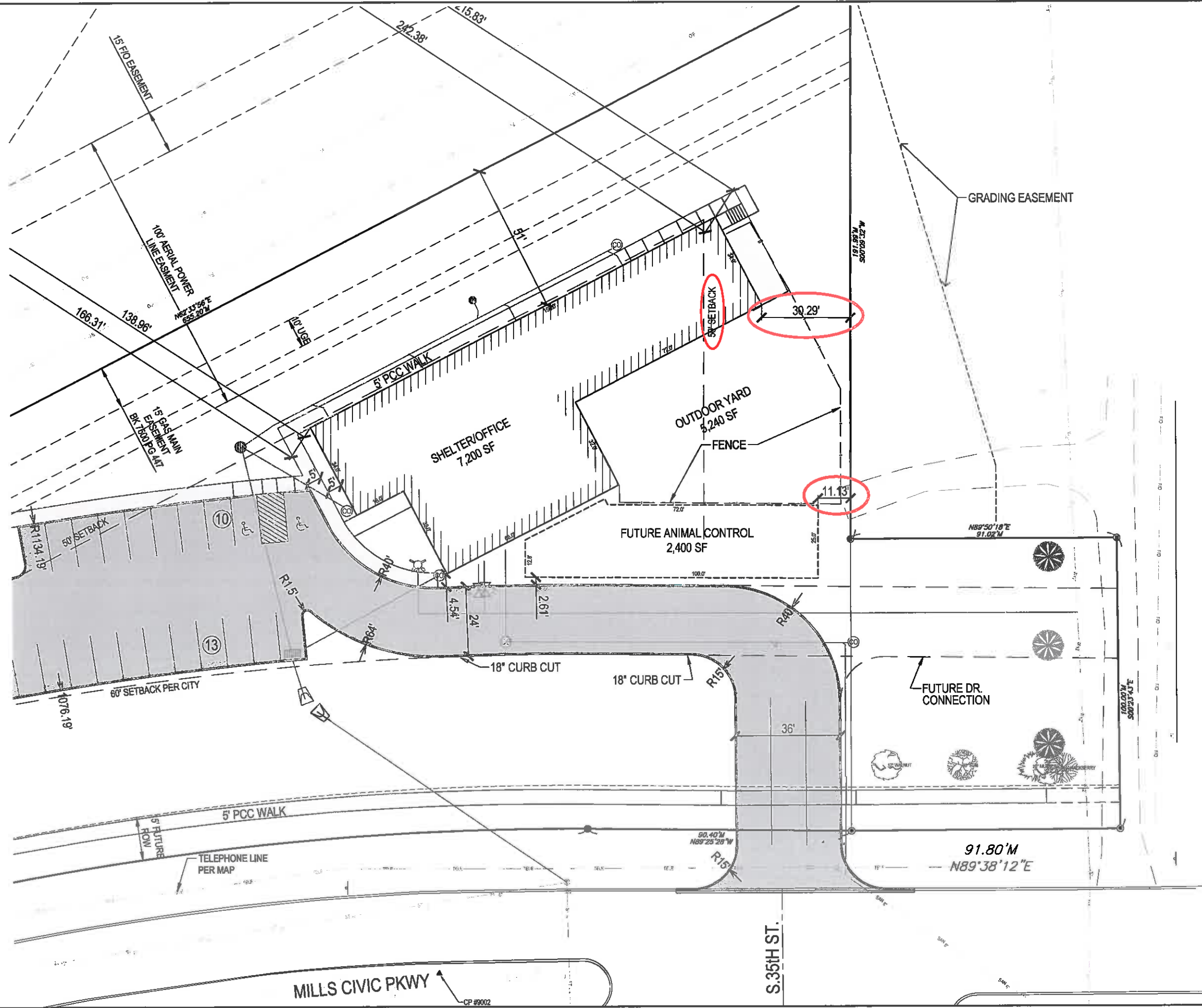
FURRY FRIENDS ANIMAL REFUGE
3505 MILLS CIVIC PARKWAY, WEST DES MOINES

LAYOUT PLAN

REFERENCE NUMBER: 150146 070358
DRAWN BY: MJE
CHECKED BY: RB
REVISION DATE:
PROJECT NUMBER: 160511
SHEET NUMBER: C2.1

10/12/2017 6:11:28 PM INLAND PROJECTS 201616051106025 LAYOUT DWG

10/12/2017 4:54:17 PM - I:\LAND PROJECTS\201616511\DWG\201616511\DWG\LAYOUT.DWG



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FURRY FRIENDS ANIMAL REFUGE
3505 MILLS CIVIC PARKWAY, WEST DES MOINES
VARIANCE EXHIBIT

REFERENCE NUMBER:
150146
070358

DRAWN BY:
MJE

CHECKED BY:
RB

REVISION DATE:

PROJECT NUMBER:
160511

SHEET NUMBER:
1 OF 1

**CITY OF WEST DES MOINES
STAFF VARIANCE APPLICATION FINDINGS**

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable sub-area plan.

The proposed use of the property as an animal shelter is consistent with the West Des Moines Comprehensive Plan in that the land use of the property is designated Support Commercial on the Comprehensive Plan Land Use Map. An animal shelter is an appropriate use in the Support Commercial land use designation and has previously been approved as an appropriate land use by the Board of Adjustment.

2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones.

The property is an irregularly shaped lot that is narrow and the western edge and larger at the eastern edge. Due to the existence of utility easements on the north side of the lot and the west side of the lot, the only place to locate the building is on the far eastern edge. In addition, on the east side of the lot there is a "jog" in the lot line that also impedes where the building can be located. And there is a 60' landscape buffer requirement along Mills Civic Parkway that also limits building location on the site.

3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest.

If the 50' side yard setback were applied to this property, the building could not be built as proposed and possibly not at all due to the irregular shape of the lot, parking requirements and the existence of the utility easements on the north and west side of the lot. The hardships associated with this lot are not self-imposed by the applicant.

4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment.

There have been no changes in the character of this site or its surroundings that will detrimentally affect the environment.

5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

The granting of this setback variance will not adversely affect the health, safety or welfare of the public. The property to the east will not be negatively impacted by the granting of this variance. Due to the location and "jog" of the shared property line at this location, there will not likely be any development on this portion of the adjacent property at any time in the future and therefore there will be no detrimental impacts because of the closer location of the proposed animal shelter building. Because of the "jog" in the eastern property line, the reduced setback will not even be noticeable to the general public.

From: Britt Gagne <bgagne@furryfriendsrefuge.org>
Sent: Tuesday, October 24, 2017 1:01 AM
To: Portz, Brian
Subject: Fwd: BOA meeting

Feedback from one of the neighbors regarding the variance request.

Sent from my iPhone

Begin forwarded message:

From: JB Conlin <JBConlin@conlinproperties.com>
Date: October 23, 2017 at 6:03:57 PM CDT
To: Britt Gagne <bgagne@furryfriendsrefuge.org>
Cc: "Lynne Twedt (lynne.twedt@wdm.iowa.gov)" <lynne.twedt@wdm.iowa.gov>
Subject: RE: BOA meeting

Britt,

Thanks for keeping us in the loop. We did receive a notice from the city and are in support of the city granting you the variance. I will try to make it to the meeting on the 1st, but if time does not allow, please feel free to use this email as evidence of our support. I have also copied Ms. Twedt with the city so she has record of this as well.

It is a very difficult site to develop and I hope the city takes this into consideration when looking at this request.

***IMPORTANT NOTE - Our corporate office has moved. Please update your records with our new address:**

3721 SW 61st Street, Suite A
Des Moines, IA 50321

Thank you,
JB Conlin
Conlin Properties
3721 SW 61st Street, Suite A
Des Moines, IA. 50321
jbconlin@conlinproperties.com
Office direct) 515.246.2936
Office main) 515.246.8016

-----Original Message-----

From: Britt Gagne [mailto:bgagne@furryfriendsrefuge.org]
Sent: Monday, October 23, 2017 7:58 AM
To: JB Conlin
Subject: BOA meeting

Hi JB,

I wanted to update you that the meeting is Nov. 1, not Nov. 2 like I was apparently erroneously thinking. There will be a few more dates as well but this one will be the first and will cover a variance where we are asking to place the building closer to the midamerican property than the 50 foot setback. This should be advantageous to your property and the property line we share is further to the north in a diagonal as you go east on our property. It places the building further from our shared property line to place the building as far east as possible.

Let me know if you have any questions.

Britt

Sent from my iPhone

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