

CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT STAFF REPORT COMMUNICATION

Meeting Date: June 1, 2022

ITEM: 485 S. 19th Street – Variance from North perimeter setback to accommodate construction of a duplex – Silo 9 Plat 1 LLC – VAR-005557-2022

REQUESTED ACTION: Variance from the North Perimeter Setback

Applicant's Request: The applicant, Jake Reid with Neighborhood Builders, on behalf of the property owner, Silo 9 Plat 1 LLC, is requesting a Variance to reduce the required North perimeter setback to accommodate the construction of a duplex. The proposed duplex will encroach into the 35' perimeter setback that is required for all properties within the Residential Medium Density (RM) zoning district. The applicant is seeking approval of a variance from Title 9, Chapter 7, Table 7.3 to reduce the minimum north perimeter setback from 35' to 30'.

History: In August 2020, the subject property was rezoned from Single-Family Residential (RS-15) to Residential Medium Density (RM-12) to provide secondary access to a proposed multi-family residential development on the abutting larger parcel to the west (CPA-004705-2020_ZC-004704-2020). Although the rezoning was approved, the proposed multi-family residential development was never constructed.

City Council Subcommittee: This item was not presented to the Development and Planning City Council Subcommittee as they do not have authority over variance requests.

Staff Review and Comment: Staff would summarize the following key points of interest:

- **Perimeter Setbacks:** The property at 485 S. 19th Street is zoned Residential Medium Density (RM-12, 12,000-sf minimum lot size). Developments within the RM-12 zoning district proposing an attached dwelling building (up to 2 stories, 4 units of less per building – such as the proposed duplex) are required to provide a thirty-five-foot (35') setback along the perimeter of the property. Given that the subject property is only 110' wide, the 35' perimeter setback reduces the buildable width to 40'. In order to construct a livable duplex, the applicant is requesting a variance from the north perimeter setback only.
- **RM Minimum Lot Area:** The subject property was intended to be part of a larger multi-family residential development. Though the proposal was never constructed the developer at the time did receive Council approval to rezone the property to its current RM district classification. This is important to note because the RM zoning district requires a minimum lot size of 2-acres. Had this development been constructed the subject property would have been replatted and tied to the larger abutting parcel to the west. The approved rezoning and failure of the abutting property to develop resulted in the 16,000-square foot vacant subject property to be deemed legally nonconforming as it is unable to meet the 2-acre minimum lot size.
- **Buffer Parks:** In 2007, a Preliminary Plat was approved by City Council that created the bounds of the subject property (PP-002007-020). The approval of this preliminary plat required the installation of a 30' landscape buffer along the north property line. The purpose of a buffer park is to provide visual screening to mitigate the impacts of development on adjacent properties. This said, even if the variance is approved the

proposed development will not encroach into this existing buffer park. If the variance is approved, the applicant must receive site plan approval from the Plan and Zoning Commission and City Council that illustrates compliance with the city's current development regulations which may require additional open space, landscaping, and screening.

- **Variance vs Zoning Exception:** A variance is similar to a zoning exception in that it is a relaxation of the applicable zoning requirement; however, a variance requires the applicant show there is an "unnecessary hardship," while an applicant must only show there is a "practical difficulty" for a zoning exception request. Specifically defined allowable Zoning Exceptions only apply to existing single-family zoned and developed properties. Relief from zoning regulations for undeveloped single-family lots, as well as requests associated with non-single-family zoned parcels must be considered as a variance. Neither a variance nor a zoning exception is permission to circumvent zoning regulations just because a resident wants an improvement: the necessary findings applicable to each request (variance or zoning exception) must be made in granting the request.

Variance Findings: To grant the variance, all of the following findings must be made, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. That the granting of the variance shall not be contrary to the public interest.
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property;
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
4. Substantial justice shall be done as a result of granting the variance.

It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the above findings can be made. The applicant's findings to grant the variance and staff's findings, are included herein for the Board's consideration in making their decision.

Lead Staff Member: Bryce Johnson

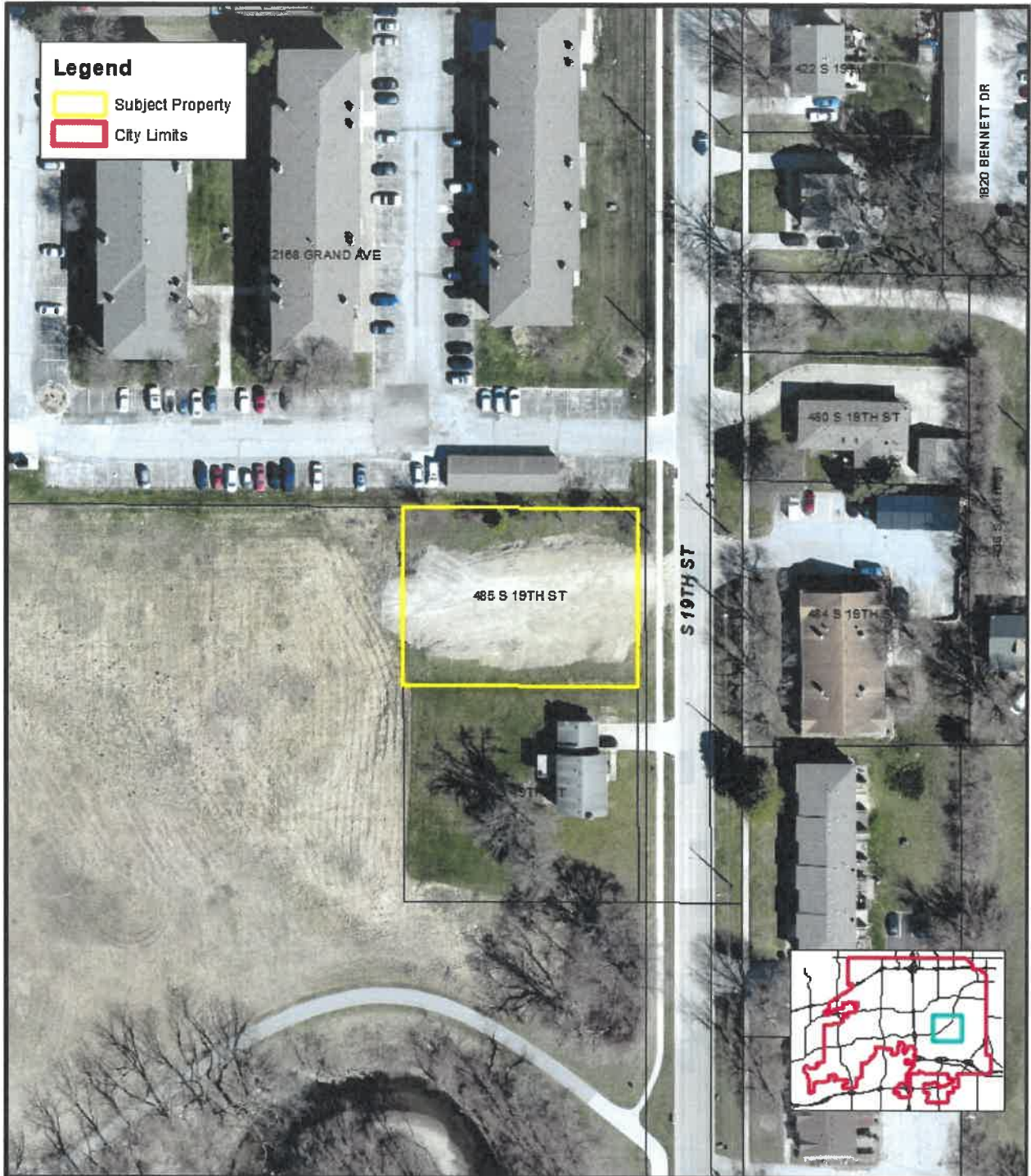
Staff Report Reviews:

<input checked="" type="checkbox"/> Development Coordinator or Director	<input type="checkbox"/> Legal Department
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Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	May 18, 2022
Date(s) of Mailed Notices	May 18, 2022

Subject Property



485 S. 19th Street Site Location Map



* For illustrative purposes only. The City of West Des Moines claims no responsibility for its correctness or content accuracy.

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When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

RESOLUTION BOA-2022-09

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,
(APPROVING / DENYING) THE VARIANCE REQUEST (VAR-005557-2022) FOR REDUCING
THE NORTH PERIMETER SETBACK FOR THAT PROPERTY LOCATED AT 485 S. 19TH
STREET**

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owner, Silo 9 Plat 1 LLC, has requested approval of a Variance from Title 9, Zoning, Chapter 7 (Setback and Bulk Density Regulations), Table 7.3, of 5' of the required 35' perimeter setback along the north property line for the construction of duplex on the property located at 485 S. 19th Street and legally described as:

**LOT 1 IN CHUCH OF NAZARENE PLAT 1, AN OFFICIAL PLAT NOW WITHIN
AND FORMING A PART OF THE
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; and

WHEREAS, on June 1, 2022, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-005557-2022).

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-00-5557-2022), to allow a variance of 5' of the required 35' perimeter setback along the north property line is (**approved / denied**).

PASSED AND ADOPTED on June 1, 2022.

Michele Stevens, Chair
Board of Adjustment

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 June 1, 2022, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. None

Exhibit B
Board of Adjustment Findings

Applicant's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
APPLICANT RESPONSE: *The proposed project will still provide a 30' buffer along the north and south property lines as required by code. The purpose of this buffer is to protect the visual interest of adjacent properties by providing sufficient building spacing and plantings to adequately screen the proposed development. Additionally, there is a garage structure on the adjacent property to the north that will provide an opaque screening of our proposed building. More importantly, the property will still comply with 35' perimeter setback requirement to the east, south, and west. The variance request is for the north perimeter setback but will not encroach into the 30' buffer.*

2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.***APPLICANT RESPONSE:*** *We are requesting a variance to construct a duplex on a property zoned RM, Medium Density Residential and only 110' wide. The strict application of the zoning regulations creates an unnecessary hardship because the 35' perimeter setback requirement reduces the buildable width from 110' to 40' which makes it impossible to construct any type of multi-family structure. The proposed duplex will only 2 units each being only 23' wide. Another unnecessary hardship from the strict application of the zoning regulations applies to this proposal because it is an attached duplex. If the building was split into two separate one-family structures the 35' perimeter setback would not apply.*

3. That the spirit of the ordinance shall be observed when the variance is granted; and
APPLICANT RESPONSE: *The spirit of the ordinance is still observed because the variance will allow us to construct a two-family duplex on a property zoned Medium Density Residential. If the variance is not approved the only viable construction, due to the setbacks, would be a single-family home, which is not permitted in the RM zoning district.*

4. Substantial justice shall be done as a result of the granting of the variance.
APPLICANT RESPONSE: *Our proposal began as a three-plex product. Once we were made aware of the 35' perimeter setback requirement we worked with city staff to try to*

reconfigure the layout of the structure by turning it 90-degrees but found doing so would require the following: a. A 12' variance rather than a 5' variance for the structure; b. Driveways too short for a standard vehicle; c. The backyard patios would be facing the single-family home to the south which would be more intrusive than what we're proposing; d. Require a shared access drive to be constructed over the existing public storm sewer easement or much closer to the south single-family property

Staff's Findings

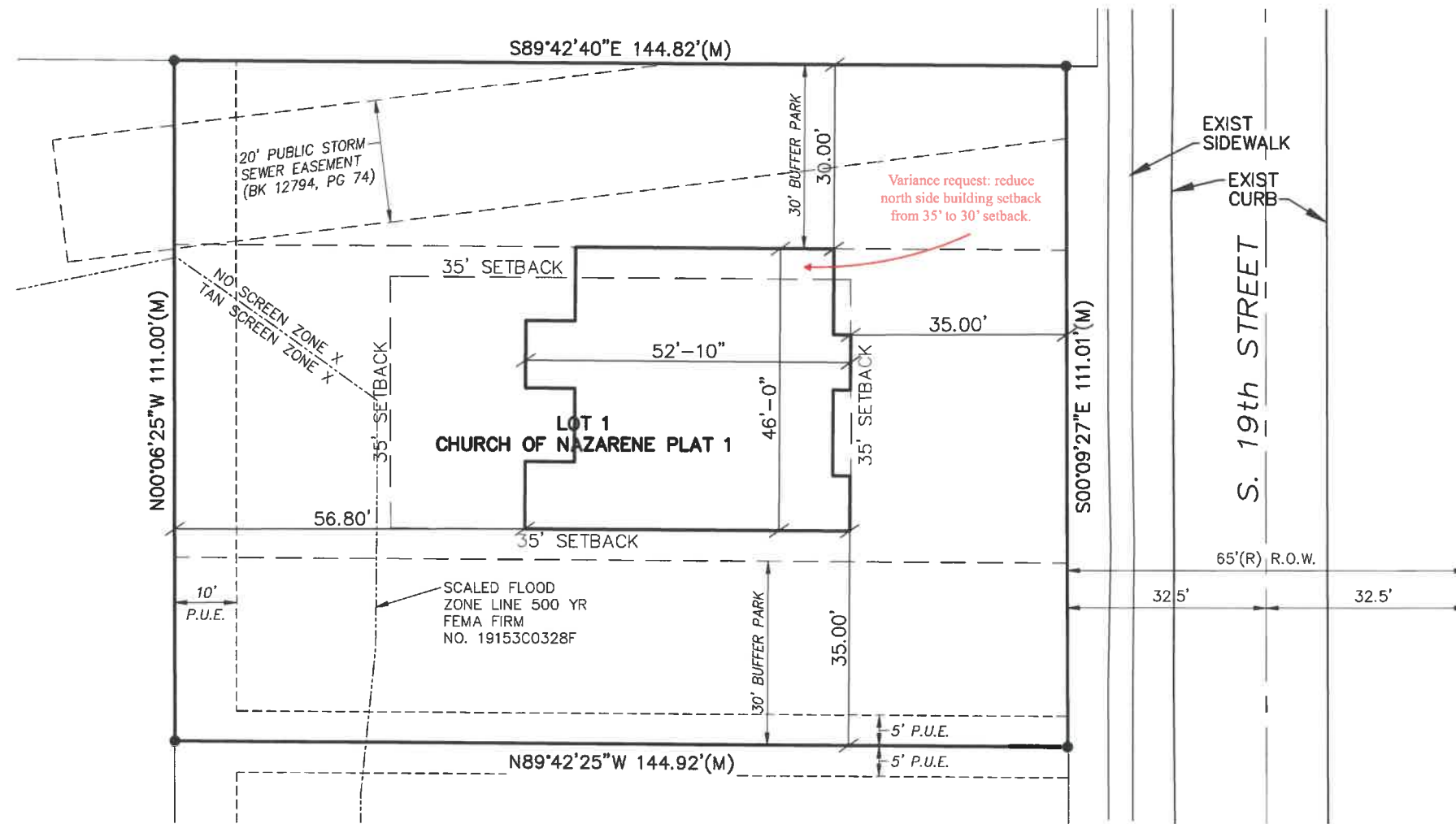
A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
STAFF'S RESPONSE: *The proposed development is consistent with the West Des Moines Comprehensive Plan since the land use designation for this property is for multi-family residential and the proposed variance is needed in order to construct a multi-family residential product. Additionally, the variance will not be contrary to the public interest due to the fact that the development will not encroach the 30' buffer park that will provide added relief between the proposed development and the detached multi-garage structure to the north. The applicant, however, should be aware that if the variance is approved, there can be no additions, patios, decks, or other similar improvements allowed that encroach the 30' buffer park area.*
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

STAFF'S RESPONSE: *An argument could be made that the subject property cannot yield a reasonable return from any use or improvement because the subject property was never intended to be a standalone multi-family lot. The parcel was only rezoned to RM as a means to facilitate a proposed apartment development to the west which would have resulted in tying the lots together. Additionally, given that the apartment development was never constructed, the subject property is now a legally nonconforming vacant lot that cannot be constructed on because it fails to meet the minimum bulk regulations (i.e., minimum 2-acre lot size). It is also important to note that the applicant cannot even build a single-family home on this property because said use is not permitted in the RM zoning district. Thirdly, it should be noted that the property being rezoned to RM-12 was not of the owner's doing. Lastly, the variance measurement being requested is the least amount needed to yield a reasonable return, which is for the construction of said duplex.*

3. That the spirit of the ordinance shall be observed when the variance is granted; and
STAFF'S RESPONSE: *The spirit of the ordinance is still observed as the applicant is requesting to construct a duplex on a lot zoned for multi-family residential uses.*
4. Substantial justice shall be done as a result of the granting of the variance.

STAFF'S RESPONSE: *The duplex development as proposed is the most logical and least intrusive solution that fits in with the context of the existing neighborhood. The applicant attempted to turn the duplex 90-degress so the rear of the structure would face south, and the garages/driveways would face north then connect to a shared road with access to S. 19th Street. This, however, resulted in a need for more variances than the one being proposed and felt to be intrusive as the rear of the structure would have patios and windows facing the existing single-family home to the south. Therefore, it is the opinion of staff that the applicant has exhausted all possible alternative building layouts for their proposed project meeting the substantial justice criteria.*



NEIGHBORHOOD BUILDERS



1"=20'

3/16/22

CHURCH OF NAZARENE PLAT 1
 LOT 1
 485 S. 19TH STREET
 WEST DES MOINES, IOWA