REPORT/RECOMMENDATION

To:	**MAYOR AND COUNCIL**	**Agenda Item**	**Item No. VI.A.**
From:	**Cary Teague** **Planning Director**	☒	**Action** **Discussion**
Date:	**May 1, 2012**	☐	**Information**
Subject:	**PUBLIC HEARING CONTINUED FROM APRIL 17, 2012– Preliminary Plat with Lot Area Lot Width Variances, 6120 Brookview Avenue, JMS Custom Homes, Resolution No 2012-62**		
Deadline for a City Decision:	**June 15, 2012**		

ACTION REQUESTED:
Direct staff to prepare findings, consistent with the City Council decision to approve or deny these requests. Staff would then bring back a corresponding resolution for adoption at the May 15, 2012 City Council meeting.

INFORMATION/BACKGROUND:
JMS Custom Homes is proposing to subdivide the property at 6120 Brookview Avenue into two lots. The existing home would remain, and a new home built on the new lot.

To accommodate the request the following is required:
1. A subdivision;
2. Lot width variances from 75 feet to 50 feet for each lot; and
3. Lot area variances from 9,000 square feet to 6,676 and 6,671 square feet.
4. Lot depth variance from 133.8 feet to 133.7 feet for Lot 2.

Planning Commission Recommendation: On March 28, 2012, the Planning Commission recommended denial of the proposed Preliminary Plat and Variances subject to the findings outlined in the staff report dated March 28, 2012. Vote for denial: 8-1.

ATTACHMENTS:
- Planning Commission Staff Report, March 28, 2012
- Minutes from the March 28, 2012 Edina Planning Commission meeting
- Letter dated April 12, 2012, from Peter Coyle, the applicant's attorney

- Correspondence from residents
- Additional Correspondence from the applicant
- DVD/CD of previous Council meetings regarding recent subdivisions on Brookview and Oaklawn

PLANNING COMMISSION STAFF REPORT

Originator **Cary Teague** **Community Development Director**	Meeting Date **March 28, 2012**	Agenda Item **VII.B.**

INFORMATION & BACKGROUND

Project Description

JMS Custom Homes is proposing to subdivide the property at 6120 Brookview Avenue into two lots. (See property location on pages A1–A5.) The existing home would remain, and a new home built on the new lot. (See applicant narrative and plans on pages A6–A11.) There is an existing air conditioner located on the proposed lot line. Should this proposal be approved, the air conditioner would have to be relocated to meet the required 5-foot setback.

To accommodate the request the following is required:

1. A subdivision;
2. Lot width variances from 75 feet to 50 feet for each lot; and
3. Lot area variances from 9,000 square feet to 6,676 and 6,671 square feet.
4. Lot depth variance from 133.8 feet to 133.7 feet for Lot 2.

Both lots would gain access off Brookview Avenue. Within this neighborhood, the median lot area is 6,707 square feet, median lot depth is 133.8 feet, and the median lot width is 50 feet. (See attached median calculations on pages A10–A11.) The new lots would meet the median width, but would slightly shy of the the median lot size and depth.

Surrounding Land Uses

The lots on all sides of the subject properties are zoned and guided low-density residential.

Existing Site Features

The existing site contains a single-family home and attached garage on the south side of the lot. (See pages A4–A5a.) There is an existing air conditioner on the proposed new lot line. This unit would have to be relocated if the project is approved.

Planning

Guide Plan designation:	Single-dwelling residential
Zoning:	R-1, Single-dwelling district

Lot Dimensions

	Area	Lot Width	Depth
REQUIRED	9,000 s.f.	75 ft	133.8 ft
Lot 1	***6,676 s.f.****	***50 ft****	133.8 ft
Lot 2	***6,671 s.f.****	***50 ft****	***133.7 ft****

*** Variance Required***

Grading/Drainage and Utilities

The city engineer has reviewed the proposed plans and submitted comment. (See page A16.) If the project is approved, a condition of approval should be that the conditions outlined in the city engineer memo must be met. Grading and drainage plans specific to any proposed house would be reviewed at the time of building permit. Drainage from any new home, garage or driveway would have to be directed to Brookview Avenue. Sewer and water are available to the site. Specific hook-up locations would be reviewed at the time of a building permit for each lot. A Minnehaha Creek Watershed District permit would also be required.

History of Subdivision Requests in the Area

The City of Edina has considered several subdivision requests with variances in this area. (See attached area map showing this locations of these requests on page A14.) The following is the history in the past five years:

Requested Subdivisions in the last five years

1. In 2006, the property at 5901 France Avenue received variances to build four (4) 66-foot wide lots consistent with the area.

2. In 2008, 6120 Brookview (the subject property) was proposed to be divided into two (2) 50-foot lots by Bravura Construction; however, the applicant withdrew the request before action was taken.

3. In 2009, a 100-foot lot at 5920 Oaklawn was granted variances to divide into two (2) 50-foot lots.

4. In 2011, the property at 5829 Brookview was granted variances to divide into two (2) 50-foot lots.

5. In 2012, the property at 6109 Oaklawn was denied their request to subdivide the property into two (2) 50-foot lots.

Primary Issue

- **Are the findings for a variance met?**

No. Staff believes that the findings for a Variance are not met with this proposal.

Per state law and the Zoning Ordinance, a variance should not be granted unless it is found that the enforcement of the ordinance would cause practical difficulties in complying with the zoning ordinance and that the use is reasonable. As demonstrated below, staff believes the proposal does meet the variance standards, when applying the three conditions:

a) *Will the proposal relieve practical difficulties that prevent a reasonable use from complying with the ordinance requirements?*

No. Reasonable use does not mean that the applicant must show the land cannot be put to any reasonable use without the variance. Rather, the applicant must show that there are practical difficulties in complying with the code and that the proposed use is reasonable. "Practical difficulties" may include functional and aesthetic concerns.

Staff believes that the property already has reasonable use with a single family home that complies with all minimum lot size requirements. It is similar in size to several lots on the block. Reasonable use of the property would still exist should the city deny the request. While there are 50-foot wide lots and 6,700 square foot lots on this block, similar to what is proposed; there are also several lots wider than 50 feet and over 6,700 square feet, including five lots to the north and west, two to the south and two to the east. (See pages A12–A13.)

As demonstrated on pages A10– A11, the median lot size in this neighborhood is 50 feet wide, 6,707 square feet in area and 133.8 feet deep. The proposed lots would be 50 feet wide, 133.7 and 133.8 feet deep and 6,676 and 6,671 square feet in size. Therefore the median lot size would not be met by either lot, and lot 2 would be just slightly under the median depth.

The action or request by the applicant to subdivide the property causes the practical difficulty. The request to subdivide the lot causes the need for the variances; therefore the practical difficulties are self-created.

b) *There are circumstances that are unique to the property, not common to every similarly zoned property, and that are not self-created?*

The condition of this oversized lot is not unique to the Brookview Avenue. While many lots are 50 feet wide and 6,700 square feet in size, there are several in the neighborhood that are wider and larger in area. As mentioned above, there are five lots to the north and west, two to the south and two to the east. (See pages A12–A13.) Again, this is a self-created hardship or practical difficulty caused by the applicant's request to subdivide. The circumstances are self-created due to the request to subdivide the property.

c) *Will the variance alter the essential character of the neighborhood?*

No. The proposed improvements requested by the variance would not alter the essential character of the neighborhood. The neighborhood includes single-family homes on 50-foot lots as proposed.

Staff Recommendation

Recommend that the City Council deny the proposed two lot subdivision of 6120 Brookview Avenue and the lot width variances from 75 feet to 50 feet for each lot, lot area variances from 9,000 square feet to 6,676 and 6,671 square feet, and a lot depth variance from 133.8 feet to 133.7 feet for Lot 2.

Denial is based on the following findings:

1. The proposal does not meet the required standards and ordinances for a subdivision, because the proposed lots do not meet the Zoning Ordinance requirements.

2. The two proposed lots do not meet the minimum lot area, lot width, and lot depth requirements.

3. The proposal does not meet the required standards for a variance, because:

a. The property exists as a conforming single-family residential lot with a single-family home. Reasonable use of the property exists today.

b. The size of the Subject Property does not create practical difficulties. The Subject Property is only 4,347 square feet larger than the minimum lot size. This is not a practical difficulty. There are no circumstances unique to the property that justifies multiple variances.

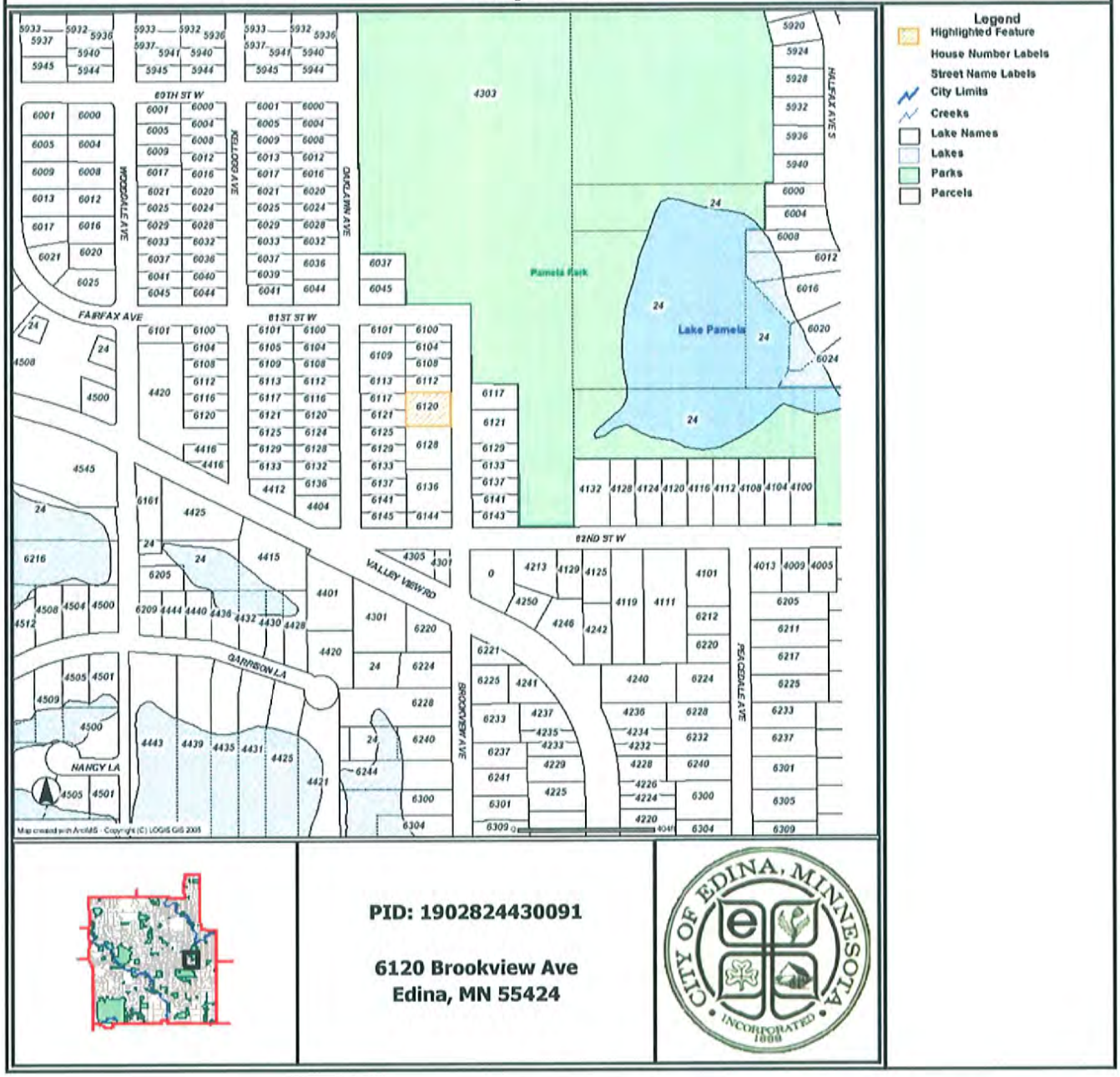
c. The practical difficulty is self-created by the applicant's proposal to subdivide the property.

d. The proposed lots do not meet the 6,707 square foot median lot area for lots in this neighborhood.

e. The Subject Property is similar in size to several lots in the neighborhood including five lots to the north and west on Oaklawn Avenue, and two lots to the south and two lots to the east on Brookview Avenue.

Deadline for a City Decision: May 15, 2012

City of Edina



PID: 1902824430091

6120 Brookview Ave
Edina, MN 55424

CITY OF EDINA, MINNESOTA · INCORPORATED 1888

A1

City of Edina

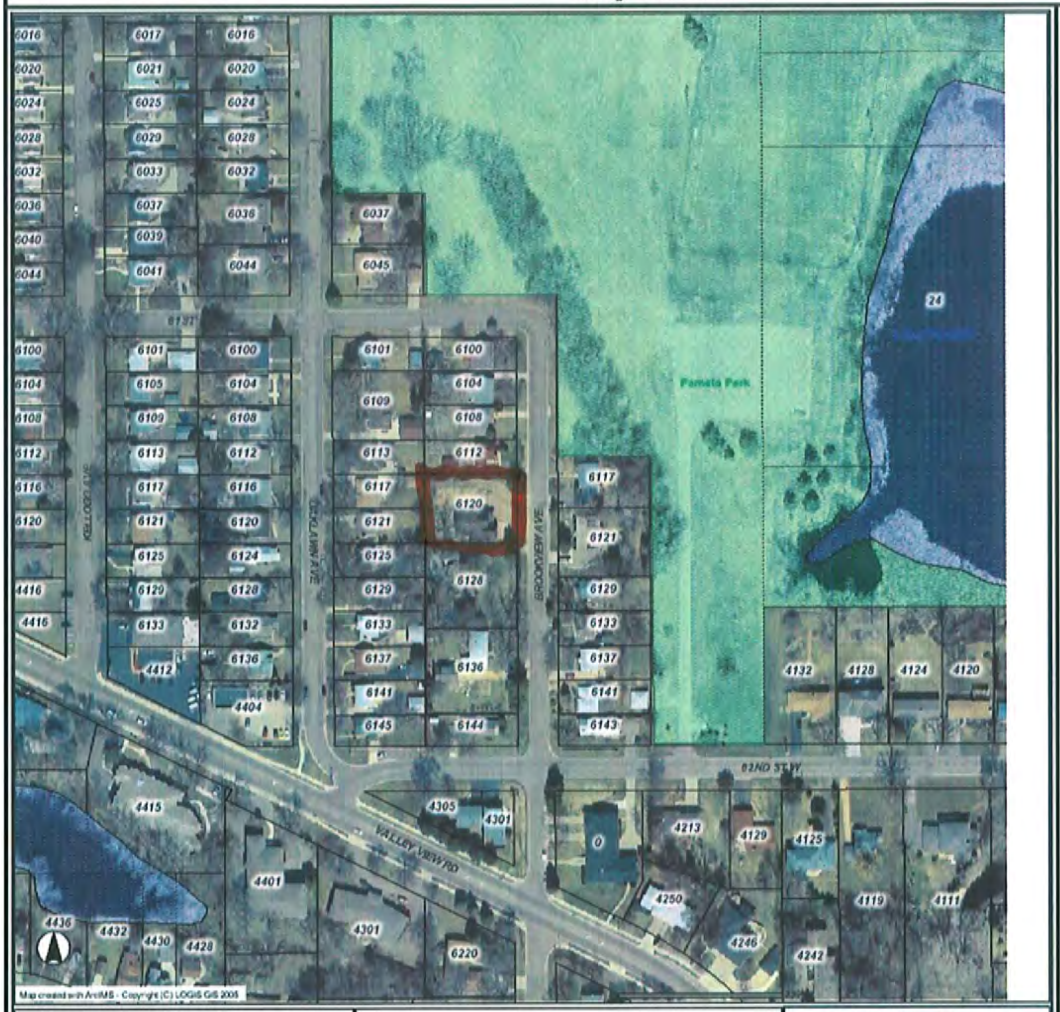
PID: 1902824430091

6120 Brookview Ave
Edina, MN 55424

CITY OF EDINA, MINNESOTA
INCORPORATED
1888

A2

City of Edina



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6120 Brookview Ave
Edina, MN 55424

CITY OF EDINA, MINNESOTA
INCORPORATED
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A3

City of Edina

Legend
- House Number Labels
- Street Name Labels
- City Limits
- Creeks
- Lake Names
- Lakes
- Parks
- Parcels
- 2009 Aerial Photo

PID: 1902824430091

6120 Brookview Ave
Edina, MN 55424

CITY OF EDINA, MINNESOTA
INCORPORATED 1888

City of Edina

Legend
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PID: 1902824430091

6120 Brookview Ave
Edina, MN 55424

A5

A5a

EXISTING HOME

Applicant Narrative
6120 Brookview Avenue
Lots ___ & ____

If not for the two parcels having been previously combined, the proposal meets the required standards for a plat, by virtue of lots 5 and 6 already having been platted.

The proposal meets the required standards for a variance because:

1. There is a unique hardship to the property caused by the existing size of the property which had not been subdivided to a size similar to the other lots in the neighborhood.
2. The requested variances are reasonable in the context of the immediate neighborhood. The existing lot is both larger and wider than other properties in the immediate neighborhood. The proposed subdivision would result in two properties more characteristic of the neighborhood.
3. The variance would meet the intent of the ordinance because the proposed lots are similar size to others in the neighborhood.

The proposed variance will:

Relieve an undue hardship which was not self-imposed or a mere inconvenience.

The original parcel (of which the subject is the remainder) was platted a new house was build on lot 6 in 2008. The current size of the subject parcel (and lot 5 as well) was due to a decision made in prior decades to keep the subject parcel virtually equal in size with any other two lots of the adjacent subdivisions, allowing unjoining, subdivision or platting at a late date. The logic would follow that when the subject was platted, there would be two lots of equal size, similar in width and depth to the adjacent parcels. The entirety of all properties in the Fair Fax plat resets in property(s) of a 50 foot lot width. The size of the combined parcel is unique in the neighborhood and is twice the size of 9x% other Fair Fax (Pamela Park) neighborhood homes. Since many decades have passed since the original Fairfax platting, the City of Edina zoning requirements were changed to the current requirements, the subject parcel's historical configuration no longer complies with the minimum lot area and minimum lot width for two lots.

Correct extraordinary circumstances applicable to this property, but not applicable to other property in the vicinity or zoning district.

The home on the subject parcel was constructed in the 1950's and renovated in 2008. The request is in effort an unjoining instead of subdivision. The prior owner removed the 1950's home to remedy a neighborhood eyesore. The parcel also has sewer and water subs in the street indicating intent of not expenses for being two parcels dating from when water and sewer were provided in 1951 following the new code requirements for minimum lot sizes. The size of the parcel is unique in the neighborhood as it is twice the size of 9x% of parcel within plat. The parcel is conforming as to the original plat, as

it is, however, this was never the intent of the original platting to have 100' width lots or how the utilities were put into the street. Also, any house built on such a large lot would likely be oversized in the neighborhood. Unjoining the parcel would more likely result in new construction conforming to the sizes of the surrounding residences.

Preserve substantial property right possessed by other property in the vicinity and zoning district.

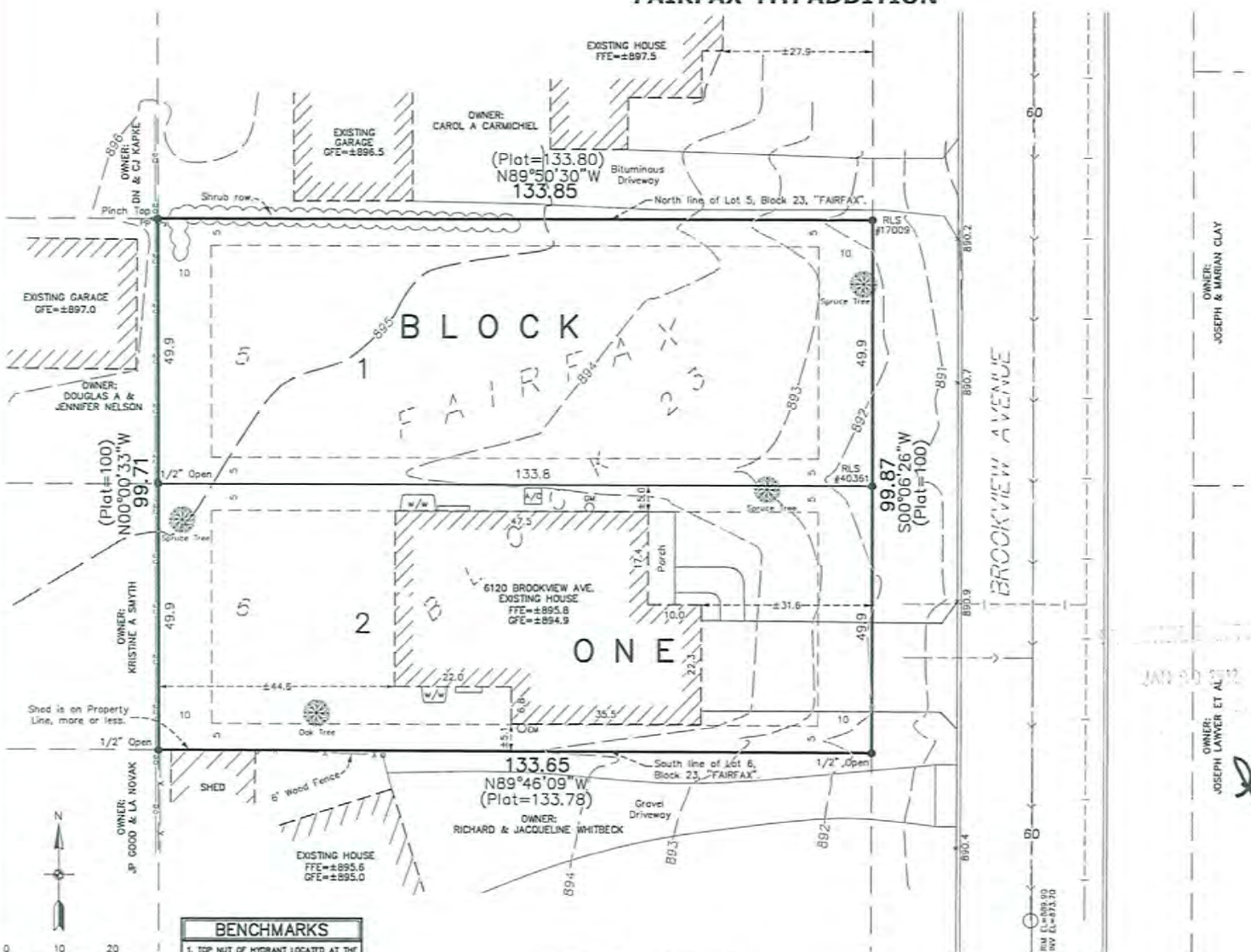
The proposed unjoining results in two lots of equal size with others on the block and in the neighborhood. The unjoining mimics the existing neighborhood lot scheme and scale. Presumably, the new construction will be similarly scaled for the neighborhood and will be more affordable than a single lot configuration. The zoning district is single family and is benefited from the single family nature of the likely construction.

Not to be materially detrimental to the public welfare or injurious to other property in the vicinity or zoning district.

The proposed unjoining comports with the surrounding lots. As a single lot it would result in a lot that is twice the size of the surrounding properties. The new construction will likely result in a house of similar scale with the neighborhood that will conform to other new "revitalized" community. The applicant does not desire to facilitate a "monster" to which would likely be injurious to the City of Edina.

PLANNING DEPARTMENT
JAN 20 2012
CITY OF EDINA

PRELIMINARY PLAT
of
FAIRFAX 4TH ADDITION



BENCHMARKS

1. TOP NUT OF HYDRANT LOCATED AT THE SE CORNER OF 61ST STREET & BROOKVIEW AVENUE. ELEV. = 884.55
2. TOP NUT OF HYDRANT LOCATED AT THE NE CORNER OF 62ND STREET & BROOKVIEW AVENUE. ELEV. = 880.28

LEGAL DESCRIPTION

Lots 5 and 6, Block 23, "FAIRFAX", Hennepin County, Minnesota

NOTES

1) Bearing shown hereon are based on the south of Lot 6, Block 23, "FAIRFAX", which is assumed to bear N89°46'09"W.

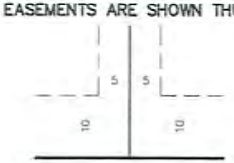
SITE DATA

TOTAL AREA	0.31 AC.
NUMBER OF LOTS	2
LOT 1	6,676 S.F.
LOT 2	6,671 S.F.
EXISTING ZONING	R1
PROPOSED ZONING	R1
UTILITIES	AVAILABLE

SETBACK DATA

FRONT YARD:	29.8 FT.
SIDE YARD:	VARIES WITH BUILDING HEIGHT (5 FT. MIN.)
REAR YARD:	25 FT.

PROPOSED DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:



being 10 feet in width and adjoining right of way lines and 5 feet in width and adjoining lot lines, unless otherwise indicated on this plat.

LEGEND

- EXISTING SANITARY SEWER
- EXISTING WATERMAIN
- OVERHEAD UTILITY LINE
- MH = SANITARY MANHOLE
- EM = ELECTRIC METER
- PP = POWER POLE
- GM = GAS METER
- ● = IRON FOUND MONUMENT

file

SHEET INDEX

1. PRELIMINARY PLAT
2. GRADING, DRAINAGE, UTILITY AND TREE PLAN

Carlson McCain
ENVIRONMENTAL • ENGINEERING • SURVEYING
248 Apollo Dr, Suite 100, Lino Lakes, MN 55014
Phone: 763-489-7900 Fax: 763-489-7959

PRELIMINARY PLAT

FAIRFAX 4TH ADDITION
Edina, Minnesota

JMS CUSTOM HOMES, LLC
5250 West 74th Street, Suite 8
Edina, MN, 55439

REVISIONS
1.
2.
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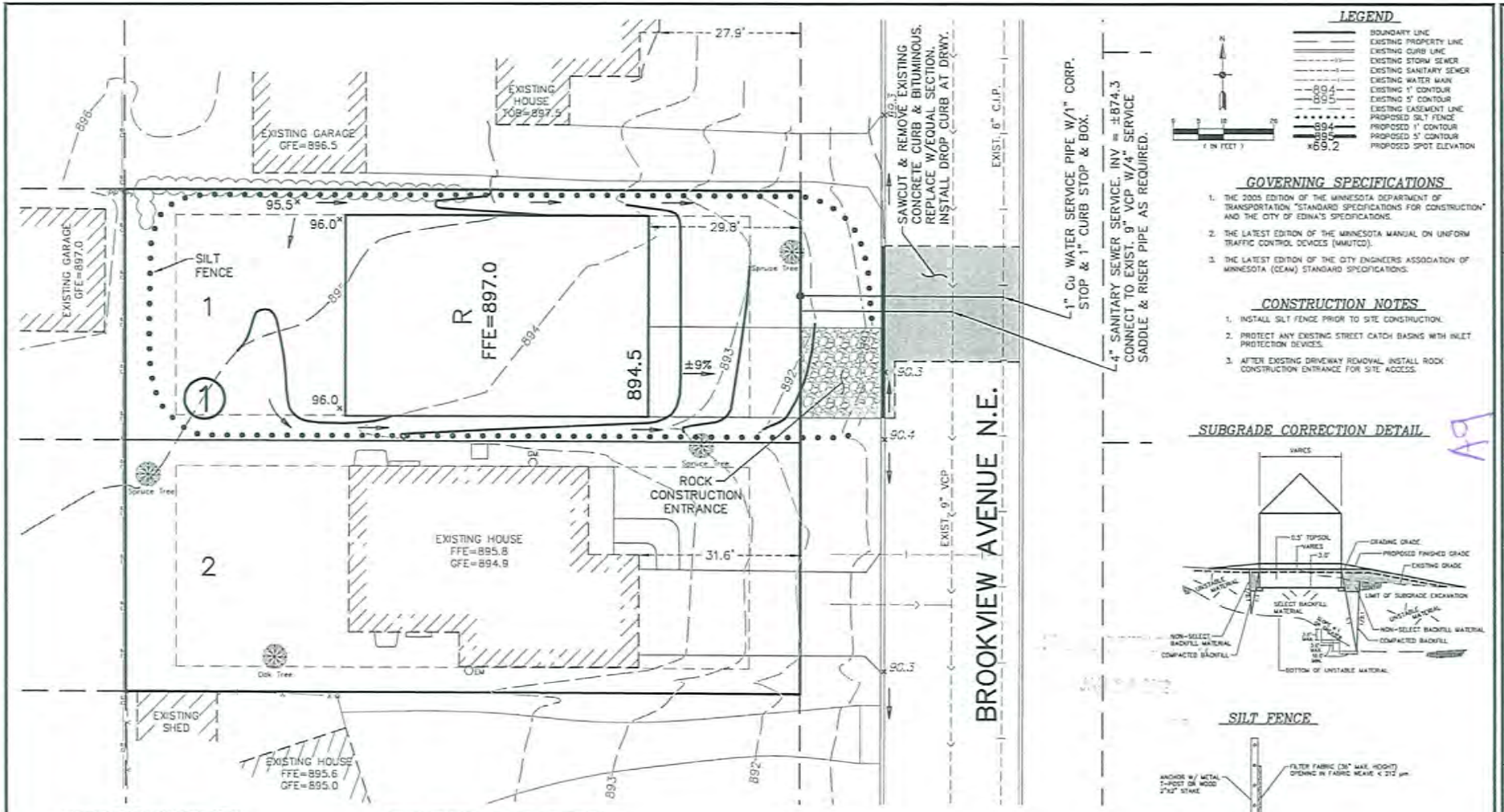
6.

Drawn By: CA
DESIGNED BY: TAB
ISSUE DATE: 01/18/12

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Name: Thomas A. Babuff, L.S.
Signature:
Date: 01/18/12 License #: 40361



LEGEND

- BOUNDARY LINE
- EXISTING PROPERTY LINE
- EXISTING CURB LINE
- EXISTING STORM SEWER
- EXISTING SANITARY SEWER
- EXISTING WATER MAIN
- EXISTING 1' CONTOUR
- EXISTING 5' CONTOUR
- EXISTING EASEMENT LINE
- PROPOSED SILT FENCE
- PROPOSED 1' CONTOUR
- PROPOSED 5' CONTOUR
- PROPOSED SPOT ELEVATION

GOVERNING SPECIFICATIONS

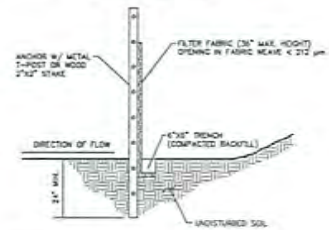
1. THE 2005 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" AND THE CITY OF EDINA'S SPECIFICATIONS.
2. THE LATEST EDITION OF THE MINNESOTA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MMUTCD).
3. THE LATEST EDITION OF THE CITY ENGINEERS ASSOCIATION OF MINNESOTA (CEAM) STANDARD SPECIFICATIONS.

CONSTRUCTION NOTES

1. INSTALL SILT FENCE PRIOR TO SITE CONSTRUCTION.
2. PROTECT ANY EXISTING STREET CATCH BASINS WITH INLET PROTECTION DEVICES.
3. AFTER EXISTING DRIVEWAY REMOVAL, INSTALL ROCK CONSTRUCTION ENTRANCE FOR SITE ACCESS.

SUBGRADE CORRECTION DETAIL

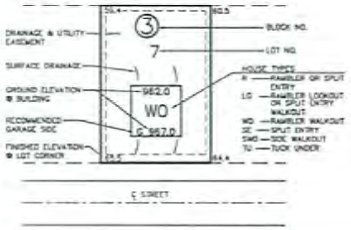
SILT FENCE



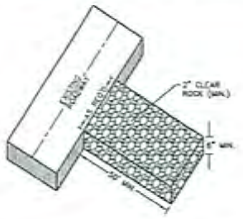
NOTES:

1. DIG A 6"X6" TRENCH ALONG THE INTENDED SILT FENCE LINE.
2. DRIVE ALL ANCHOR POSTS INTO THE GROUND AT THE DOWNHILL SIDE OF THE TRENCH.
3. POSTS SHALL BE SPACED A MAXIMUM OF 6 FEET APART.
4. LAY OUT SILT FENCE ALONG THE UPHILL SIDE OF THE ANCHOR POSTS AND BACK FILL 6"X6" TRENCH.
5. SECURELY ATTACH SILT FENCE TO ANCHOR POSTS W/ MINIMUM OF THREE ATTACHMENTS PER POST.
6. SEE MNDOT SPECIFICATIONS 2573 & 3886.

GRADING PLAN LOT KEY



ROCK CONSTRUCTION ENTRANCE



CALL BEFORE YOU DIG

811

Know what's below. Call before you dig.

The subsurface utility information shown on this plan is utility Quality Level D. This quality level was determined according to the guidelines of CI/ASCE 38-02, entitled "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data."

Carlson McCain
ENVIRONMENTAL • ENGINEERING • SURVEYING
248 Apollo Dr, Suite 100, Lino Lakes, MN 55014
Phone: 763-489-7900 Fax: 763-489-7959

GRADING, DRAINAGE, UTILITY & TREE PLAN

FAIRFAX 4TH ADDITION
Edina, Minnesota

JMS CUSTOM HOMES, LLC
5250 West 77th Street, Suite 8
Edina, MN 55439

REVISIONS
1.
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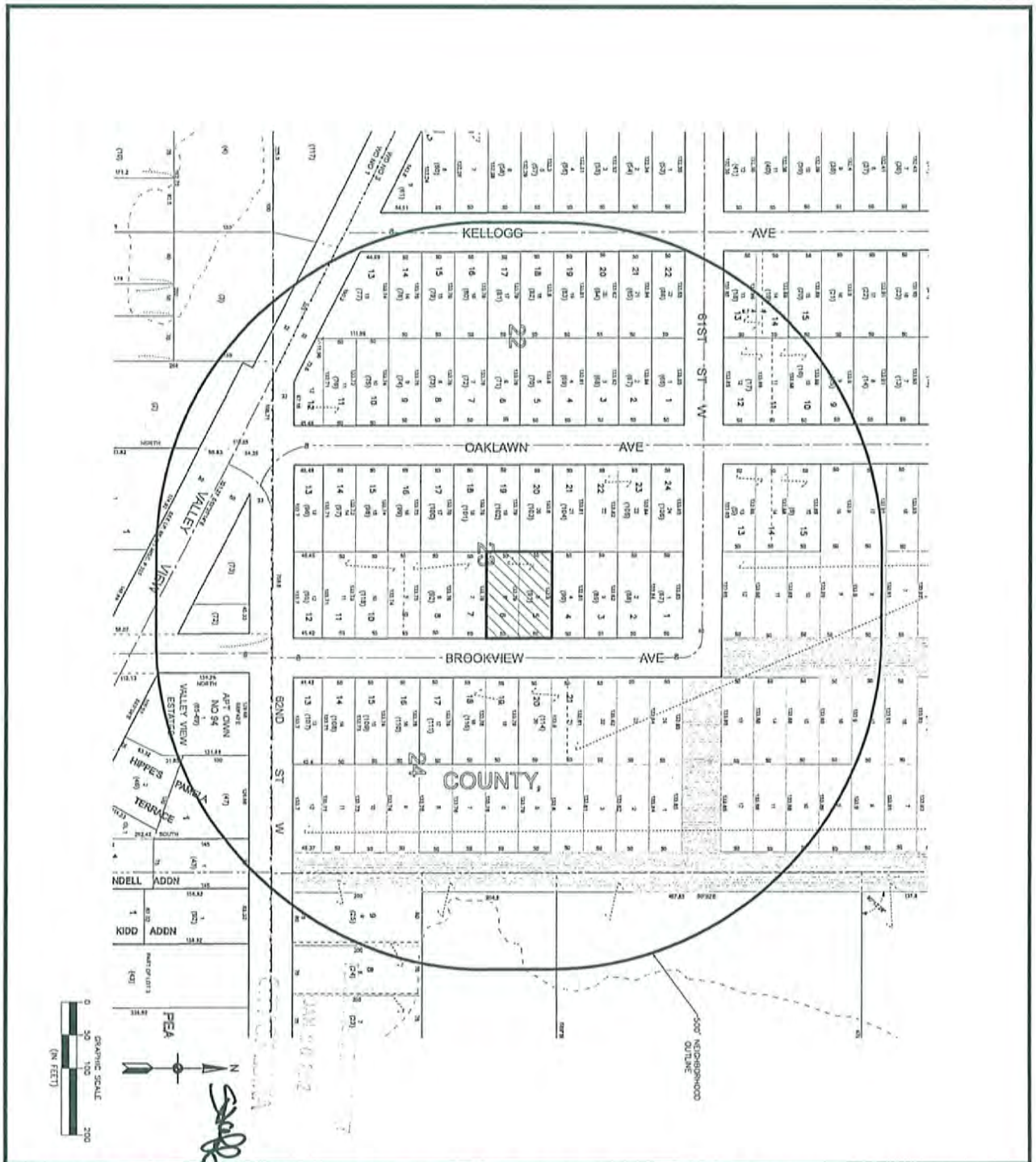
6.

DRAWN BY: TTK
DESIGNED BY: TTK
ISSUE DATE: 01/20/12

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Name: Brian J. Kowalchuk, P.E.
Signature:
Date: 01/20/12 License #: 25063

2 of 2



500 FT. NEIGHBORHOOD EXHIBIT
for:
JMS CUSTOM HOMES, LLC

FAIRFAX 4TH ADDITION
Edina, Minnesota

Carlson McCain
ENVIRONMENTAL · ENGINEERING · SURVEYING
248 Apollo Dr, Suite 100, Lino Lakes, MN 55014
Phone: 763-489-7900 Fax: 763-489-7959

REVISIONS

DRAWN BY: CM

I hereby certify to that this survey, plan or report was prepared by my or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 20th day of January, 2012.

Thomas R. Bellaire, L.S. Reg. No. 40301

1 of 2

A10

LEGAL DESCRIPTION	PROPERTY OWNER	ADDRESS	AREA (Sq. Ft.)	WIDTH (Ft.)	DEPTH (Ft.)
L15 & N 1/2 L14, B19, FAIRFAX	EG RAMBERG & MY KAGONOVICH	6037 Oaklawn Ave	10,047	75	133.88
L13 & S 1/2 L14, B19, FAIRFAX	JL DOW & SA BOTTS	6045 Oaklawn Ave	10,046	75	133.86
L9, B19, FAIRFAX	S KRANTZ & V KRANTZ	6032 Oaklawn Ave	6,691	50	133.90
L10 & N 1/2 L11, B19, FAIRFAX	RA SOLBERG ETAL	6036 Oaklawn Ave	10,035	75	133.88
L12 & S 1/2 L11, B19, FAIRFAX	MICHAEL SKINNER	6044 Oaklawn Ave	10,033	75	133.86
L13 & S 7/10 L14, B19, FAIRFAX	DOUGLAS MAYO & WIFE	6041 Kellogg Ave	7,985	60	133.86
L14, B19, FAIRFAX	DAVID L BRATTLAND ETAL	6039 Kellogg Ave	5,392	40	133.87
L15, B19, FAIRFAX	DAVID J BERGESON	6037 Kellogg Ave	6,689	50	133.88
L1, B22, FAIRFAX	JM DURR & JC POOL	6100 Oaklawn Ave	6,707	50	133.84
L2, B22, FAIRFAX	DAVID G ANDERSON ETAL	6104 Oaklawn Ave	6,706	50	133.83
L3, B22, FAIRFAX	L FLACK & RL FLACK	6108 Oaklawn Ave	6,705	50	133.81
L4, B22, FAIRFAX	JEFFREY A STOEHNER	6112 Oaklawn Ave	6,704	50	133.81
L5, B22, FAIRFAX	W HENN AFFORD HSNG LAND TRUST	6116 Oaklawn Ave	6,704	50	133.80
L6, B22, FAIRFAX	BL STRANGIS & SL STRANGIS	6120 Oaklawn Ave	6,703	50	133.79
L7, B22, FAIRFAX	BS GEORGE & SM GEORGE	6124 Oaklawn Ave	6,702	50	133.77
L8, B22, FAIRFAX	JL CRAMER & E BILDSTEN	6128 Oaklawn Ave	6,701	50	133.76
L9, B22, FAIRFAX	JULIE A STEINER	6132 Oaklawn Ave	6,700	50	133.75
L10, B22, FAIRFAX	LINDA M KNIGHT TRUST AGRMT	6136 Oaklawn Ave	6,706	50	133.74
L11 & 12, B22, FAIRFAX	BURLEY'S HAIR SALON LLC	4404 Valley View Rd	11,691	95	133.7
L13, B22, FAIRFAX	EDINA VALLEY VIEW, LLC	4412 Valley View Rd	10,508	70	133.7
L14, B22, FAIRFAX	EDINA VALLEY VIEW, LLC	6133 Kellogg Ave	6,699	50	133.75
L15, B22, FAIRFAX	Q JOHN LASLEY	6129 Kellogg Ave	6,700	50	133.76
L16, B22, FAIRFAX	CHARLOTT ELIZABETH RONNEI	6125 Kellogg Ave	6,701	50	133.77
L17, B22, FAIRFAX	ANTONY RUSSELL & WIFE	6121 Kellogg Ave	6,701	50	133.79
L18, B22, FAIRFAX	JENNIFER C GREIG	6117 Kellogg Ave	6,702	50	133.80
L19, B22, FAIRFAX	MARILYN E ABRAM	6113 Kellogg Ave	6,703	50	133.81
L20, B22, FAIRFAX	R HARRELL & A HARRELL	6109 Kellogg Ave	6,704	50	133.82
L21, B22, FAIRFAX	EDWARD M DOYLE & NANCY T DOYLE	6105 Kellogg Ave	6,704	50	133.84
L22, B22, FAIRFAX	SHIRLEY L GUTKNECHT	6101 Kellogg Ave	6,705	50	133.85
L1, B23, FAIRFAX	TG MOHER & SA MOHER	6100 Brookview Ave	6,709	50	133.85
L2, B23, FAIRFAX	WS LANDGREN & M LANDGREN	6104 Brookview Ave	6,708	50	133.83
L3, B23, FAIRFAX	SHARON K BRINGS	6108 Brookview Ave	6,708	50	133.82
L4, B23, FAIRFAX	CAROL A CARMICHEL	6112 Brookview Ave	6,707	50	133.81
L7 & L8 & N 25' OF L9, B23, FAIRFAX	RB & JT WHITBECK	6128 Brookview Ave	16,771	125	133.77
S 25' L9 & all of L10 & L11, B23, FAIRFAX	LJ WESTIN & CE HUGHS	6136 Brookview Ave	16,750	125	133.73
L12, B23, FAIRFAX	DEBRA K LITTLE	6144 Brookview Ave	6,091	45.43	133.71
L13, B23, FAIRFAX	CECILIA JAISLE	6145 Oaklawn Ave	6,098	45.47	133.71
L14, B23, FAIRFAX	PA SCHAEFER ETAL SUBJ/LE	6141 Oaklawn Ave	6,706	50	133.72
L15, B23, FAIRFAX	SHARON K SAGEL	6137 Oaklawn Ave	6,707	50	133.74
L16, B23, FAIRFAX	CAROLYN A BARRET	6133 Oaklawn Ave	6,707	50	133.75
L17, B23, FAIRFAX	KENNETH R DEVRIES	6129 Oaklawn Ave	6,708	50	133.76
L18, B23, FAIRFAX	JP GOOD & LA NOVAK	6125 Oaklawn Ave	6,709	50	133.77
L19, B23, FAIRFAX	KRISTEN A SMYTH	6121 Oaklawn Ave	6,709	50	133.79
L20, B23, FAIRFAX	DOUGLAS A & JENNIFER NELSON	6117 Oaklawn Ave	6,710	50	133.80
L21, B23, FAIRFAX	DN KAPKE & CJ KAPKE	6113 Oaklawn Ave	6,710	50	133.81
L22 & L23, B23, FAIRFAX	JG & MM BOHLANDER	6109 Oaklawn Ave	13,422	100	133.82
L24, B23, FAIRFAX	DANNY ERWIN UHRHAMMER	6101 Oaklawn Ave	6,712	50	133.85
L13, B24, FAIRFAX	RC & AC MOONAN	6143 Brookview Ave	6,083	45	133.71
L14, B24, FAIRFAX	MIROSLAVA TURK	6141 Brookview Ave	6,698	50	133.72
L15, B24, FAIRFAX	BARBARA E NELSON	6137 Brookview Ave	6,699	50	133.74
L16, B24, FAIRFAX	DM & SB NELSON	6133 Brookview Ave	6,700	50	133.75
L17, B24, FAIRFAX	AM & KM REILLY	6129 Brookview Ave	6,700	50	133.76
L18 & L19, B24, FAIRFAX	JOSEPH LAWVER ETAL	6121 Brookview Ave	13,402	100	133.78
L20 & S 25' L21, B24, FAIRFAX	JP & MR CLAY	6117 Brookview Ave	10,047	75	133.80
W 72' L8 & E 9' L9, B2, LAKE PAMELA	KNS & AR STEINERT	4128 62nd St W	15,400	77	200
Part W of E 9', L9, B2, LAKE PAMELA	EARL P HOLDRIDGE ETAL	4132 62nd St W	21,003	105	200
L1, B1, FINDELL ADD.	PHIL & PAMELA J BERLING	4129 62nd St W	10,876	75	145
Part of OLI, NLY of L2, B1, HIPPES PAMELA	C & L WALLIN	4213 62nd St W	15,516	126.66	138.5
APT OWN 94 VALLEY VIEW ESTATES	UNKOWN	6201 Brookview Ave	~20,260	162.9	125.5
E 45.33' of NE 1/4 W of BROOKVIEW AVE	GARY & JANET G NOBLE	4301 62nd St W	4,425	45.3	96
Part of NE 1/4 W of BROOKVIEW AVE	GARY & JANET G NOBLE	4305 62nd St W	7,406	70.4	42.5
L1, B1, VICTORSENS VALLEY VIEW	D & B EDINA LLC	4301 Valley View Rd	28,873	157.9	184.7
E 133' of W 658' of N 268' of NW 1/4 of NE 1/4	VICTORSENS RENTAL	4401 Valley View Rd	25,509	133	212.9
E 200' of W 525' of N 150' of NE 1/4	VM VICTORSEN ETAL TRUSTEES	4415 Valley View Rd	34,482	200	170

MEDIAN LOT WIDTH	MEAN LOT WIDTH	MEDIAN LOT DEPTH	MEAN LOT DEPTH
50.0 Ft.	66.9 Ft.	133.6 Ft.	136.6 Ft.

MEDIAN LOT AREA	MEAN LOT AREA
6,707 Sq.Ft.	9,420 Sq.Ft.

JAN 3 0 2021

Carlson McCain
ENVIRONMENTAL • ENGINEERING • SURVEYING
248 Apollo Dr, Suite 100, Lino Lakes, MN 55014
Phone: 763-489-7900 Fax: 763-489-7959

500 FT. NEIGHBORHOOD EXHIBIT
for:
JMS CUSTOM HOMES, LLC

FAIRFAX 4TH ADDITION
Edina, Minnesota

REVISIONS

DRAWN BY: CK

I hereby certify to that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 18th day of July, 2011.

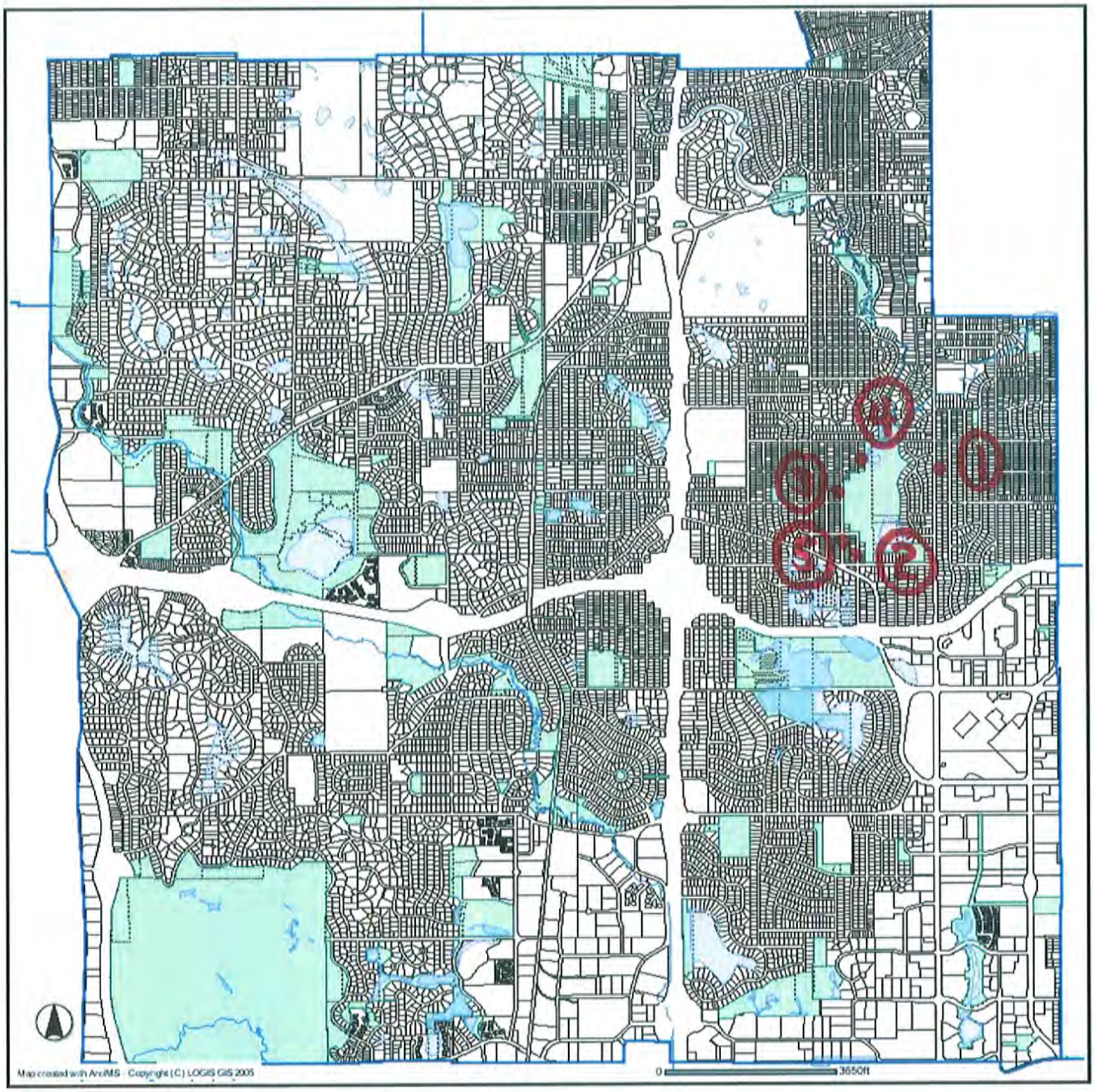
Thomas R. Balluff, L.S. Reg. No. 40381

2 of 2

AH

LOT AREA
OVER 6,700 S.F.

LOT WIDTHS OVER 50-FEET



1. 5901 France
2. 6130 Brookview
3. 5920 Oaklawn
4. 5829 Brookview
5. 6109 Oaklawn

City of Edina

MEMORANDUM

TO: Cary Teague, Community Development Director

FROM: Steve A. Kirchman, Chief Buildng Official SAK.

DATE: February 15, 2012

SUBJECT: 2008.0002.12a Fairfax 4th Addition

I was asked to review the proposed preliminary plat stamped "PLANNING DEPARTMENT, JAN 20 2012, CITY OF EDINA" for the above referenced project.

The proposed interior property line between lot 1 and lot 2 creates a noncomplying setback condition for the existing air conditioner compressor for 6120 Brookview Ave. The air conditioner compressor must be relocated. I recommend a relocation schedule be included as a condition of approval for the plat.

H:\Documents\Memos&Rpts\Planning\Fairfax4thAddn.doc A15

City Hall
4801 WEST 50TH STREET
EDINA, MINNESOTA, 55424-1394

www.CityofEdina.com

952-927-8861
FAX 952-826-0390
TTY 952-826-0379

CITY OF EDINA

Engineering Department • Phone 952-826-0371
Fax 952-826-0392 • www.CityofEdina.com

MEMO

Date: **March 6, 2012**

To: **Cary Teague – Director of Planning**

cc:

From: **Wayne Houle – City Engineer**

Re: **Plan Review**
Preliminary Plat of Fairfax Fourth Addition

Engineering has reviewed the above stated project (dated January 18, 2012) and offer the following comments:

The proposed lot split will need to be reviewed in detail at the time of a building permit application.

Permits needed:

- A Minnehaha Creek Watershed Permit will be required for storm water, grading, and erosion control.
- An Edina Curb Cut Permit (obtained in the Engineering Department) will be required for the driveway entrances to each lot.
- REC and SAC fees will be required for this project.

Utilities and site work:

1. Any upgrades or additions to the sewer and water system that disturb the street will require a full width pavement replacement, from saw cut to saw cut.
2. Connection into the existing drain tile for sump pump and downspouts will be required for with this project.
3. Site grading will need to be reviewed at the time of building permit application.

Please contact me if you have any questions regarding this review.

Thanks

G:\PW\ADMIN\COMM\EXTERNAL\GENERAL CORR BY STREETS\B Streets\6120 Brookview Ave\20120308 WH review of 6120 Brookview Ave.doc

To: Edina Planning Commission
Edina City Council
Cary Teague, Kris Aaker, Planning Dept.
Scott Neal, City Manager

March 8, 2012

From: Janey Westin& Charlie Hughes
6136 Brookview Ave., Edina

Re: Proposed Subdivision of 6120 Brookview Ave., Edina; Fairfax, Block 23, Lots 5 & 6
Jeffrey Schoenwetter of JMS Custom Homes

Planning Commission Members and City Staff,

We are **strongly** opposed to this proposed lot division.

The City has Zoning Ordinance, Subsection 850.07, Subd. 20B4a which states: "If a non-conforming lot or parcel is, or at any time since October 22, 1951, has been, held in common ownership with all or part of an adjoining or abutting parcel or lot which together comply with, or come close to complying with, the minimum width, depth, area, and lot width to perimeter ratio, requirements of this Section, then such non-conforming lot or parcel and such adjoining or abutting parcel or lot shall be considered as ONE LOT and SHAL NOT BE DECREASED IN SIZE below such minimum requirements. If in a group of two or more adjoining or abutting lots or parcels owned or controlled by the same person, any single lot or parcel does not meet the full minimum depth, width, area or lot width to perimeter ratio requirements of this Section, such single lot or parcel shall not be considered as a separate lot or parcel able to be conveyed and developed under this code." The city minimum lot width is 75 feet.

The City of Edina must follow the City's own laws and ordinances to protect home owners from intimidation and reckless harm from developers like JMS who demonstrate absolutely no consideration of neighboring homeowners. The history of how JMS has behaved regarding 6120 Brookview Avenue is a case in point:

Late spring of 2008-- Another developer (Palaudian) attempted to divide 6120 into two 50 foot wide lots. He had a purchase agreement with a contingency of subdivision, planning to build 2 large houses and cut down a healthy, 91 foot spanning oak tree in the process. The neighborhood strongly objected, and it was not approved. The City followed Zoning Ordinance. JMS's then-president, Andy Porter, attended the proceedings. Palaudian then backed out of the agreement. Within 2 days, JMS had bought it, before any neighbors could take other action. JMS then submitted plans to the City for a large, single home to be built, somewhat centered on the lot, though too close to the street with a setback of 33 feet, but did not begin construction.

Early October, 2008, JMS approached Jim Holan, Property ID Supervisor for Hennepin County, attempting to divide 6120 Brookview at the County level. Edina City Planning was called and alerted; JMS did not get a lot division because he had not applied for one. Shortly thereafter, the existing rambler was removed and the large oak tree cut down. The open hole of the basement remained with no fencing around it for more than 10 days through Halloween weekend, in spite of my phone call to City Inspections.

Fall of 2008, JMS then submitted new plans which were approved by Planning, for a full two story home of extremely large size, and completely out of character and proportion to anything within 500

feet (the neighborhood). He had his surveyors place this new house completely within the south half of the parcel (Lot 6) as if JMS had a lot division, which JMS did not. JMS also had his surveyors position the house 8+ feet closer to the street than front setback code allowed. This position put the back wall of the JMS house further forward than the front north corner of the neighboring historic Whitbeck home to the south. JMS has pled ignorance of understanding setback code, though this was the 35th or 36th home he built in Edina. In court, he also blamed this on his surveyor, though as the agent for his surveyor, JMS is the responsible party. From the moment the survey stakes were put in the ground in early December of 2008, it was clear that JMS's intent was to force the City to grant a subdivision of the property.

On December 22, 2008, JMS applied to the City for a building permit for the north half of 6120 Brookview, Lot 5. He had not applied for a subdivision. The permit was turned down, noted in a memo of the same date, on file in Planning.

JMS proceeded with construction on the south half of the parcel in December. The foundation was poured on the coldest day of that winter, when temperatures were way below code rules for concrete. It was not tented or blanketed, violating state concrete construction code. Nonetheless, it passed inspection, and construction continued. The Whitbecks spoke with City Planning people and expressed concern with position of the house. Construction continued to the point of the wood frame shell being completed and the roofing materials half on.

Finally, in early January 2009, after more complaints by the Whitbecks regarding position of the house, a stop work order was placed on the house by the City, and it was determined to be way too close to the street, about 8 feet. JMS applied for a variance to allow the house to be as it sat, which was not granted. JMS also took the City to court to be allowed to continue construction, pleading that he would go out of business if the house couldn't be ready for the Spring 2009 Parade of Homes. After doing research, it seems that JMS's financial problems were due to numerous failed development projects, bankruptcies and lawsuits-- not this single house project. The Whitbeck's, the most affected party regarding this new JMS house, were not informed of JMS's first court appearance, and had no voice in the proceedings. The judge allowed JMS to proceed with construction. Construction usually started at 6:00-6:30 am, in violation of city code.

The house was finished and open for the Parade of Homes in February, 2009. It did not sell. In the fall of 2009, Nancy and Jeffrey Schoenwetter listed the house for sale through Prime Real Estate Services describing it as sitting on a 50 foot wide lot, not as a 100 foot wide lot. This was a clear violation of 3 Ethics rules of the Minnesota Association of Realtors. It was fraudulent information. No application for subdivision had been applied for. In an October 8, 2009 letter to Mr. Schoenwetter, former Edina City Manager Gordon Hughes advised Schoenwetter to accurately list the 6120 Brookview Avenue parcel size. J. Schoenwetter sent a reply October 26th, stating, 'We do understand and respect your interpretation of city code. We may not necessarily agree with this interpretation.' Interpretation??!!

The Schoenwetters found a party to sign a 2 year contract for deed type of arrangement in December, 2009. At the end of the 2 years, in December, 2011, they moved out, not proceeding with the contract.

So, here things sit, with an oversize, completely out of place house, that could still be moved to the center of the 100 foot wide lot. Yes, this is possible. I have spoken with Otting House Movers, the company that moved the original home off the lot. They have experience moving houses, even 2 story houses to a new position on an existing lot. It would not cost more than about $50,000 total (new foundation water, sewer and moving), and JMS could still make a profit. There are no obstacles on this

lot that would hinder this type of repositioning. If this house were centered sensibly on the lot, it would sell quickly.

Schoenwetter has clearly created his own hardship. He has a reasonable use of the property with one house on it. His 'practical difficulty' is the position of the existing house, which he and the City are responsible for and which can be remedied. Strangers that come by this house stop and ask us, 'What is it with the position of that house?'. He has thumbed his nose at City ordinances, seeming to think the 'rules' don't apply to him. JMS is the poster child of a bad developer, and should not be granted his request for a subdivision. He should be given every possible incentive to reposition the house, with required approval of the City and review by the neighbors. Then it would sell, and many hard feelings could be laid to rest.

Janey Westin & Charlie Hughes

To: Edina Planning Commission
Edina City Council
Cary Teague, Kris Aaker, Planning Dept.
Scott Neal, City Manager

March 8, 2012

From: Dan Uhrhammer
Owner and resident of 6101 Oaklawn Ave., Edina

Re: Proposed Subdivision of 6120 Brookview Ave., Edina; Fairfax, Block 23, Lots 5 & 6
Jeffrey Schoenwetter of JMS Custom Homes

Planning Commission Members and City Staff,

I am **strongly** opposed to this proposed lot division.

The City has Zoning Ordinance, Subsection 850.07, Subdivision. 20B4a which states: "If a non-conforming lot or parcel is, or at any time since October 22, 1951, has been, held in common ownership with all or part of an adjoining or abutting parcel or lot which together comply with, or come close to complying with, the minimum width, depth, area, and lot width to perimeter ratio, requirements of this Section, then such non-conforming lot or parcel and such adjoining or abutting parcel or lot shall be considered as one lot and shall not be decreased in size below such minimum requirements. If in a group of two or more adjoining or abutting lots or parcels owned or controlled by the same person, any single lot or parcel does not meet the full minimum depth, width, area or lot width to perimeter ratio requirements of this Section, such single lot or parcel shall not be considered as a separate lot or parcel able to be conveyed and developed under this code." The city minimum lot width is 75 feet.

This is a City of Edina zoning ordinance, and was established to protect this city from suffering from the "crowding" of properties much like that which exists in many residential areas of Minneapolis. Basically, exceptionally large homes on very small lots.

I cannot tell you why the city originally allowed or plotted 50 foot lots. But, they apparently realized they were not suitable to build upon very early in the development of this city.

The only thing that has changed in any way since establishment of the 75 foot lot width requirement is that very little developable land exists in Edina anymore. Developers and a portion of the public want these subdivisions to pass. Not for the good of the city, but for financial gain, or for cheap entry into residency in Edina. This area (Fairfax) of Edina is one of the most affordable neighborhoods in Edina to buy in. The sacrifice those of us who live here made was the size of the homes, to maintain and have green space, and yards. Now, people just want in, and want their big home. But do not want to pay for the appropriate size of lot to hold them, or buy into more expensive areas of Edina.

I understand these desires, but neither care about the effect these subdivisions, or these hugh home have on a neighborhood. They just want it, and the hell with anyone else.

As to the "Hardships" that JMS may face on this property. Along with their request for a subdivision as a result of them. You should all know the story well. They did it to themselves, and Edina shouldn't fix it for them.

Say no to the subdivision this time, and every time one is requested.

Sincerely,
Dan Uhrhammer
6101 Oaklawn Ave.

And by the way, just because the vast majority of lots in the area are 50 feet. Calling it the norm, and thus approving the subdivision seems like the easy way out. Besides, yes they for the most part are 50 foot lots. But our homes are also 1000-1200 square foot ramblers, or story and a half. Isn't that also the norm here? Perhaps the building codes for these small lots should also be addressed.

March 8, 2012

To: City Manager Scott Neal
City Planner Cary Teague
Planning Commission Members

RE: Proposed subdivision by JMS Homes at 6120 Brookview Avenue

I strongly oppose the proposed subdivision by JMS Custom Homes LLC at 6120 Brookview Avenue.

My property at 6112 Brookview Avenue is adjacent to the above referenced property. JMS Custom Homes LLC seeks to subdivide the property in order to build a second house on a lot size less than 75 feet which is the current lot size minimum in Edina.

I have lived in my home since 1974.

My driveway which is on the right of my home, is on a hill. Along with regular snow removal, I have relied on the southern sun exposure to melt ice and snow from the driveway and sidewalks in the winter months. The house that JMS Custom Homes LLC is proposing to build will block that sun and light, causing hardship, difficulty and compromises my safety.

I question whether Mr. Schoenwetter has taken into consideration City Code 850.11 single dwelling unit subdivision 20B4 with regard to front and side setbacks for this second home.

***If a non-conforming lot or parcel is, or at any time since October 22, 1951 has been, held in common ownership with all or part of an adjoining or abutting minimum width, depth, area, and lot width to perimeter ratio, requirements of this Section, then such non-

conforming lot or parcel and such adjoining or abutting parcel does not meet the full minimum depth, width, area or lot width to perimeter ratio requirements of this Section, such single lot or parcel shall not be considered as a separate lot or parcel able to be conveyed and developed under this Code.

I also refer you to: Minnesota Statute: MS 462.35, subd6(2):

Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

JMS Custom Homes, LLC created the "circumstances" when he chose to build an oversized two story home extremely close to the historic home on Brookview, ignoring the legal codes for side and front setbacks. Also, in order to build the oversized home, he made the decision to remove a healthy 200 + year old Savannah Oak Tree from the property. JMS Homes created the "practical difficulties" when he made the decision not to build one home in the center of the lot.

The "essential character" of the neighborhood was altered in 2008 and the JMS home at 6120 Brookview remains unoccupied.

The "essential character" of the locality will again be altered if the variance is granted for the building of a two story home on the property. Most of the homes on Brookview Avenue are single story to 1-1/2 story homes.

Sincerely,

Carol Carmichiel
6112 Brookview Ave.

Jackie Hoogenakker

From: DWMUSIC@comcast.net
Sent: Thursday, March 08, 2012 7:48 PM
To: Janey Westin
Subject: Re: J. Hoogenacker-Fwd: Brookview

Janey, can't make this go through. Please forward to Planning Comission. Thanks.

Dick & Jackie

- - -

To: Edina Planning Commission Members

3/8/12

From: Dick & Jackie Whitbeck

6128 Brookview Ave

Edina, MN 55424

Re: Proposed subdivision of 6120 Brookview Avenue.

We wish to state our respectful opposition to the proposed subdivision of 6120 Brookview Avenue, and to the associated request for a variance. Dividing this property will not create affordable housing, will have a negative impact on the neighborhood, is not in harmony with the current 75 foot minimum lot size and does not comply with Minnesota statues and Edina city ordinances.

Minnesota Statute section 462.375, sub division 6 (2) states "Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the

zoning ordinance. 'Practical difficulties' as used in connection with the granting of a variance means that the property owner proposes to use the property in a reasonable manor not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the land owner; and the variance will not alter the essential character of the locality."

Cary Teague in his opposition to a recent subdivision on Brookview Ave, stated "The action or request by the applicant to subdivide the property causes the practical difficulty. The request to subdivide the lot causes the need for variances therefore, the practical difficulties are self-created." The situation here is similar. The applicant's need for a variance from the 75 foot frontage requirement has arisen solely because the applicant proposes to subdivide an already conforming lot and create two nonconforming lots. We cannot conceive of a clearer example of a self-created hardship. For this reason alone we believe the applicant's request for variance, and associated subdivision should be denied.

If the property is subdivided as proposed, a very drastic change will be wrought upon the essential character of the neighborhood. The applicant's representatives have stated to others that the existing home at 6120 Brookview Ave (which was apparently sold for $849,000) is a model for the new construction. This would be a very large home. This neighborhood currently consists of more modest cottage style homes of one and a half story, located in a wooded setting, and selling in the 200 - 300 thousand dollar range. This will alter the essential character of the neighborhood. The home this applicant already built on the property is a poster child for poor development.

The very nature of a variance is that each property is unique in its characteristics and that the application of the zoning ordinance should be reviewed in light of the unique characteristics of that property. That is, each variance is by nature a de novo review. Precedent has no bearing in a variance case, except in the helpful guidance a prior example may provide. The council is not bound by prior precedent. The question is not what has the City done before, but rather what is unique about this property that requires the commission to waive the usual application of our development code and create two nonconforming lots from one conforming lot. I see no such uniqueness in this property.

The planning commission has previously stated that a similar request for subdivision would restore the neighborhood to its original intent of 50 foot plots. Whose intend would this be? Not the City's! We would like to draw your attention to city ordinance 850 .07 subdivision 20 B. 4, which states that: "If a non - conforming lot or parcel is, or at any time since October 22, 1951, has been, held in common ownership with all or part of an adjoining or abutting parcel or lot which together comply with, or come close to complying with the minimum width, depth, area, and lot width to perimeter ratio, requirements of this Section, then such non-conforming lot or parcel and such

adjoining or abutting parcel or lot shall be considered as one lot and **shall not be decreased in size below such minimum requirements."** We read this ordinance as meaning that it is the City policy, indeed requirement, to create conforming lots out of nonconforming lots. Indeed, in the 350 foot radius surrounding the proposed subdivision, 25% of the lots are greater than 50 feet (our own home, which predates subdivision, consists of three lots). The City's intent is for there to be 75 foot lots, and where possible to combine nonconforming lots into conforming lots. The applicant however, proposes the opposite, he would create nonconforming lots out of a conforming lot. This is turning prior City policy on its head.

The severe negative impact a subdivision would have on our us and our neighbors who have owned our properties for decades is beyond comprehension. We and others purchased our property in good faith based on city codes at the time. We deserve the utmost consideration. As neighbors to the property in question, we do not want this subdivision. This subdivision and variance will not be for the greater good, but will only put more money in one developer's pocket. Edina city ordinance 850.04 subd. 2 paragraph F basically says that the applicant must have a favorable finding on all criteria for approval. This simply cannot be done in this case. No special benefits should be given to this applicant. In compliance with Minnesota statutes and Edina ordinances this application should be denied.

Respectfully,

Dick & Jackie Whitbeck

From: "Janey Westin" <janeywestin@usa.net>
To: "Jackie Whitbeck" <jkwhitbeck@comcast.net>, "Whitbecks" <dwmusic@comcast.net>
Sent: Saturday, March 3, 2012 9:46:39 AM
Subject: J. Hoogenacker-Fwd: Brookview

Hey Dick and Jackie,
Here is Jackie Hoogenacker's contact info. (The gal in Planning at city hall to send your letter to.) --Janey
Forwarded message is attached.

voted aye; motion carried. 9-0

B. Preliminary Plat with Variances – 6120 Brookview Avenue for JMS Custom Homes, LLC

Planner Presentation

Planner Teague informed the Commission JMS Custom Homes is proposing to subdivide the property at 6120 Brookview Avenue into two lots. There is an existing air conditioner located on the proposed lot line. Should this proposal be approved, the air conditioner would have to be relocated to meet the required 5-foot setback.

Teague noted that to accommodate the request the following is required:

1. A subdivision;
2. Lot width variances from 75 feet to 50 feet for each lot; and
3. Lot area variances from 9,000 square feet to 6,676 and 6,671 square feet.
4. Lot depth variance from 133.8 feet to 133.7 feet for Lot 2.

Teague explained that both would gain access off Brookview Avenue. Within this neighborhood, the median lot area is 6,707 square feet, median lot depth is 133.8 feet, and the median lot width is 50 feet. The new lots would meet the median width, but would slightly shy of the the median lot size and depth.

Planner Teague concluded that staff recommends that the City Council deny the proposed two lot subdivision of 6120 Brookview Avenue and the lot width variances from 75 feet to 50 feet for each lot, lot area variances from 9,000 square feet to 6,676 and 6,671 square feet, and a lot depth variance from 133.8 feet to 133.7 feet for Lot 2.
Denial is based on the following findings:

1. The proposal does not meet the required standards and ordinances for a subdivision, because the proposed lots do not meet the Zoning Ordinance requirements.
2. The two proposed lots do not meet the minimum lot area, lot width, and lot depth requirements.
3. The proposal does not meet the required standards for a variance, because:

    a. The property exists as a conforming single-family residential lot with a single-family home. Reasonable use of the property exists today.
    b. The size of the Subject Property does not create practical difficulties. The Subject Property is only 4,347 square feet larger than the minimum lot size. This is not a practical difficulty. There are no circumstances unique to the property that justifies multiple variances.
    c. The practical difficulty is self-created by the applicant's proposal to subdivide the property.

d. The proposed lots do not meet the 6,707 square foot median lot area for lots in this neighborhood.
e. The Subject Property is similar in size to several lots in the neighborhood including five lots to the north and west on Oaklawn Avenue, and two lots to the south and two lots to the east on Brookview Avenue.

Appearing for the Applicant

Jeff Schoenwetter and Steve Bona, JMS Custom Homes, LLC

Applicant Presentation

Mr. Bona addressed the Commission and acknowledged that the proposed subdivision has a "past" and is very "charged". Bona reported that JMS mailed out letters to residents inviting them to attend a neighborhood meeting informing them of their plan to subdivide the property at 6120 Brookview Avenue. Bona said six residents came and viewed the subdivision and plans for the new house.

Bona delivered a power point presentation on the project. Bona explained that the new house would be 2,600 square feet, 28-feet wide with a building height of 26 ½-feet. Continuing, Bona said the plan for the house was generally well received and if the Commission so chooses JMS would be agreeable to place restrictions on the new house above what's required by ordinance.

Discussion

Commissioner Staunton asked when the existing house was built. Mr. Bona responded the house was constructed two years ago. Staunton questioned why JMS didn't seek a subdivision at that time. Bona responded that in hindsight that would have been a good idea; however they didn't do it.

Public Comment

Chair Grabiel acknowledged that the Commission was aware of the history of this site adding that at this time he would read two letters from residents; one in support of the proposal and one in opposition. Grabiel said if anyone has something new to share different from what's in the letters they are welcome to do so.

Chair Grabiel read letters from Doug and Jenny Nelson and Dan Urhammer (attached as Exhibit "A").

Mr. Valentine, 5024 Hankerson Avenue addressed the Commission reporting that a new house is being built near him and while he has some concerns on its size, etc. he believes that the new house will benefit his property.

Janey Westin, 6136 Brookview Avenue, spoke in opposition to the project. Westin said two wrongs don't make a right and suggested that the City purchase the property and move the house on the southernmost portion of the lot to the middle of the lot and at the proper front yard setback.

Jenny Nelson, 6117 Oaklawn Avenue told the Commission she supports the request. Nelson said her concern is viewing the vacant lot. She noted without a house on a lot the vacant parcel becomes messy and unkempt because no one is there on a day to day basis to care for the property.

Miroslava Turk, 6141 Brookview Avenue stated she opposes the request to subdivide. She pointed out that the subject block was unique because there are other lots on the block in excess of 50-feet. Turk noted that this is an affordable area, adding she would like to see it remain affordable.

Trudy Landgren, 6104 Brookview Avenue spoke in opposition to the project. Landgren said she and the neighbors aren't fighting development; however, have very real concerns with the size of the new houses being built in the area. Landgren said in her opinion Edina needs moderate priced housing and if all lots that are redeveloped build such large homes the neighborhood character would be changed. Concluding, Landgren reiterated the importance of maintaining moderate housing prices.

Carol Carmichiel, 6112 Brookview Avenue said that while the proposed house could suit the site she is concerned with the history of the lot and that history might repeat itself. Carmichiel said she doesn't want to see another overly large house built on the lot at the wrong setbacks.

Chair Grabiel questioned if the applicant assures the neighborhood the house they depicted would be built would they still object. It was acknowledged that neighbors have trust issues with this developer.

Mr. Bona responded that he understands the trust issues neighbors have expressed, adding if the neighbors concern is house size JMS will stand by their offer to build a house with setbacks more stringent than allowed by ordinance.

Chair Grabiel asked if anyone else would like to address the Commission; being none Chair Grabiel called for a motion to close the public hearing.

Commissioner Carpenter moved to close the public hearing period. Commissioner Staunton seconded the motion. All voted aye; motion carried.

Discussion

Commissioner Carpenter commented when one views the drawings this neighborhood appears to be a neighborhood of 50-foot wide lots. However, after further review he decided if one only looks at this lot and block, it becomes apparent this block is different because it contains a number of lots in excess of 50-feet. Continuing, Carpenter said he agrees with staff that the need for variances are self-created because of the applicants' intent to subdivide.

Commissioner Fischer said he struggles with this being self-created. He questioned how this request was self-created when similar subdivisions in the area weren't. Fischer asked if anyone could articulate how this request was different from the recent subdivisions in the immediate area.

Planner Teague responded if one only views this lot on this block this block contains a number of oversized lots. That couldn't be said with some of the other subdivisions. Commissioner Fischer said he agrees with that; however how can this be self-created. Commissioner Carpenter responded variances wouldn't be necessary if the lot wasn't subdivided. Continuing, Carpenter said he believes the applicant acquired the property knowing the ordinance requirements.

A discussion ensued on if the variances were "self-created".

Commissioner Staunton said there are standards that can be used to "test" if this proposal meets the intent of the ordinance – 1) is the use reasonable 2) uniqueness of the circumstances, and 3) neighborhood consistency. Staunton said he finds the use reasonable, it's a single family house; but if he applies the other standards this subdivision is different and that makes a big difference in establishing neighborhood character. Continuing, Staunton pointed out that he voted to approve a subdivision at 6109 Oaklawn, pointing out on that block there were no other lots with a lot width of 100-feet. Continuing, Staunton said the same could be said for the other subdivision request on Oaklawn. Staunton did acknowledge that the subdivision that was approved on the 5800 block of Brookview did contain lots larger than 50-feet; however, some of those sizes were the result of the roadway easements, etc.. Staunton concluded that he was uncomfortable supporting this request, adding in his opinion this one block is different.

Commissioner Schroeder said in his opinion it can be argued that the essential character of this neighborhood is the variable lot sizes. The original plat was for 50-foot lots; however, over the years the neighborhood evolved with people combining those 50-foot lots.

Chair Grabiel asked Commissioners how they would feel if this was reversed and a buyer was purchasing two small lots; combines them and builds one large house. Staunton acknowledged that that could happen; however he pointed out

City Code allows that, it doesn't allow this.

Commissioner Platteter questioned if Commissioners were indicating that neighborhood character can't change. He pointed out neighborhoods are always evolving, ordinances don't' stand still. Schroeder agreed; however defining neighborhood isn't that simple.

Commissioner Scherer told the Commission she can't support this request. Scherer said in her opinion residents should be able to rely on the ordinance; adding she reviews each request on its individual merits. Concluding, Scherer said that the subject lot wasn't unique and the applicant fails to meet the "test".

Commissioner Forrest commented that in reality the house proposed for this lot is a nice house; however, the request doesn't meet the intent of the ordinance. Forrest said if the Commission wants to preserve these small lot neighborhoods and believes neighborhoods originally plated with lots under 75 feet in width should be protected a better way to achieve maintaining neighborhood character would be for the Planning Commission to change the zoning ordinance and eliminate the minimum lot width, depth and lot area requirement. Forrest noted that if constructed on a 50-foot wide lot the house itself wouldn't require variances; because of the subdivision the lot requires the variances. Concluding, Forrest said she can't support the variances; therefore, can't support the subdivision.

Motion

Chair Staunton moved to deny the request by JMS to subdivide property located at 6120 Brookview Avenue. Denial is based on 1) a 100-foot wide lot is not unique to this block; there are multiple lots in excess of 50-feet 2) the new house built to one side cannot be considered unique, an "orphan" lot was created; however, this was self-inflicted and 3) although building one single family house is reasonable subdividing this lot isn't because it doesn't maintain the character of this block. Denial is also based on staff findings. Commissioner Scherer seconded the motion.

Commissioner Fischer stated for him this was a tough decision, adding he struggled with it being self-created. He acknowledged at first glance this was a 50-lot neighborhood but the comments from Commissioners Staunton and Schroeder persuaded him otherwise.

Chair Grabiel said he can't support the motion, adding he doesn't agree with the logic that this subdivision request is different from ones previously granted.

Ayes; Forrest, Scherer, Schroeder, Potts, Platteter, Carpenter, Staunton, Fischer. Nay; Grabiel. Motion for denial approved 8-1.

Larkin Hoffman ATTORNEYS

Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

April 12, 2012

Hon. James Hovland, Mayor
Edina City Councilmembers
City of Edina
4801 W. 50th Street
Edina, Minnesota 55424

Re: Preliminary Plat and Variances for 6120 Brookview Avenue

Dear Mayor Hovland and Councilmembers:

We represent JMS Custom Homes, LLC in connection with its proposed subdivision of 6120 Brookview Avenue into two lots. In this regard, JMS is seeking variances from the City's 75-foot minimum lot width standard to establish two lots of 50-feet in width. A related lot depth variance for one-tenth of a foot is also requested with the subdivision.

Approval of the preliminary plat and variances is reasonable for several practical reasons:

1. The requested subdivision will reinstate the historical lot dimensions for the subject property;
2. The requested lot dimensions in the after-condition, with 50-foot lot frontages, will be more compatible with the immediate and surrounding neighborhoods of the City, including those lots immediately adjacent to, across from and behind the subject property;
3. The variances will allow a reasonable use of the newly created lot for a single-family home, which is consistent both with the City's Comprehensive Plan and Zoning Ordinance, as well as "the essential character of the locality"; and
4. The applicant has committed to making concessions on the site plan such as increased setbacks and other standards applicable to the proposed residence, to ensure it is very compatible with the existing neighborhood.

City History of Recent Variance Decisions

The City of Edina has allowed and disallowed subdivision variances for the same reasons, with no consistent rationale for these decisions. In the staff report for the subject application, staff has documented three (3) separate variance approvals in recent years to create smaller lots than allowed by Code, all of which were approved, in part, due to their compatibility with the surrounding neighborhoods. Yet, the City Council recently voted to deny a variance for 6109 Oaklawn Avenue to establish two 50-foot lots, notwithstanding the recommendation of the City's Planning Commission and staff. During the Planning Commission discussion on the 6109 Oaklawn site, City staff confirmed that the requested lot split was not a correction of a self-

imposed hardship as the prior subdivision creating the larger lot was not initiated by the applicant; staff also confirmed that denial of the variance would deprive the applicant of a reasonable use of his property, similar to the use rights enjoyed by other 50-foot lot owners in the neighborhood.

What seems most evident from the City's record of its recent decisions is the documented lack of a rational basis for denial of the noted variances. Put differently, the City's actions on their face appear arbitrary. In the 6109 Oaklawn situation, while there were objectors, not a single resident objected that the variance being sought would impose a unique burden on the neighborhood or establish an unreasonable use of the property. Nor was any evidence presented that reflected an undue burden on City services. For these reasons staff recommended the variances for the lot split and the Planning Commission agreed with their recommendation.

New Statutory Variance Standard

Recently the Minnesota Legislature amended state law to provide a more flexible standard for municipal consideration of variance applications. The new standard replaced the so-called "undue hardship" standard which many cities and property owners had argued was too restrictive and limited reasonable land use requests which otherwise were consistent with local policies. The new standard also replaces the requirement that an applicant be able to demonstrate that the subject property cannot be put to a reasonable use without the requested variance.

The new statutory standard provides:

> Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant demonstrates there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

Minn. Stat. 462.357, subd. 6(2) (enacted Laws 2011, Ch. 19).

Applying the new statutory standard and the applicable facts to the subject property leads to the conclusion that variances for the lot split and lot depth are not only appropriate, but required. The proposed use of the site is "reasonable" as that term is defined in statute (a single family home is a guided and zoned use of the property); the practical difficulty is not imposed by the landowner but rather reflects a City standard that has been shown to be unworkable and impractical in long-established neighborhoods of the City; the current lot configuration of 100 feet at the frontage line was not created by the applicant, but rather by a prior owner's actions and exceeds by a significant margin the City's existing lot frontage requirements. Establishing

two lots with 50-foot frontages simply reinstates a previous lot pattern for the subject property; no evidence has been presented to support a finding that two homes on the subject property will be out of character with "the locality." In fact, two homes on the subject property will be more consistent with the immediate neighborhood and the vast majority of the locality. Finally, the applicant proposes to meet or exceed other City standards applicable to the proposed residence, including yard setbacks and building height as additional opportunities for compromise. This is in contrast to prior applicants who neither had a plan depicting concessions nor offered to make concessions on site plan design as part of their variance request.

The City may only deny the requested variance for 6120 Brookview if it has a rational basis for doing so, supported by facts in the record. The overwhelming weight of City policies supports the requested lot split and reasonable use; no burdens will be imposed on the City nor on adjacent residents or the community at large; the City has an inconsistent practice of approving (and sometimes denying) variances for lot splits based on virtually identical facts. It is arbitrary and capricious for the City to selectively apply undefined variables, including which lots within the plat are selected for comparison to the request. While we respect the right of residents to raise concerns and objections to the proposal, the City's obligation is to weigh all relevant facts and apply the law consistently and fairly. In this instance, doing so leads to the inescapable and legally compelled conclusion that the requested variances for 6120 Brookview are appropriate and reasonable.

Thank you for considering this request to approve the variances for the subject property.

Sincerely,

Peter J. Coyle, for
LARKIN HOFFMAN DALY & LINDGREN, Ltd.

Cc: JMS Custom Homes, LLC
Elliott Knetsch, Esq.

1401084.1

Ensuring Excellence

EDINA EDUCATION FUND

RECEIVED
MAR 2 8 2012

March 27, 2012

JMS Custom Homes
5250 W. 74th St, Suite 8
Edina, MN 55439

Dear JMS Custom Homes,

Thank you for your donation to the Edina Education Fund. We are grateful for your support of Edina Public Schools. We have received the following donation from you:

$1,000.00 on March 12, 2012 via Check 2680 Golf & Tennis Hole Sponsor

The Edina Education Fund is looking forward to the differences you are allowing us to make across the school district. Our goal is to continue to keep our students at the forefront of the future and global challenges ahead. The Edina Education Fund has been working closely with Edina Public Schools leadership to provide support in maintaining excellence in our schools.

We are excited to support three new initiatives: a Writing Center at South View, Math Center at Valley View and a new online digital learning website "Ecademy" for Edina students, their families and the community. We also recently funded 15 Innovation Grants throughout the district.

Your contribution is fully tax-deductible. The Edina Education Fund did not provide any goods or services in consideration for the contribution and is organized and operated under IRS code 501(c)(3). Please contact me with any questions.

Sincerely,

Karen Nelson

Karen Nelson
Executive Director

Thanks so much for supporting our Golf & Tennis event - really appreciate.

Karen

5701 Normandale Road • Edina MN 55424 • 952.848.4222 • Fax: 952.848.4903 • www.edinaedfund.com

EDINA COMMUNITY FOUNDATION

STRENGTHENING OUR COMMUNITY

July 14, 2011

Nancy Schoenwetter, Vice President
Jeffrey Schoenwetter, Chairman and CEO
JMS Custom Homes, LLC
5250 West 74th Street #8
Edina, MN 55439

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DICK CROCKETT

Dear Nancy and Jeff,

Thank you very much for your recent $25,000 Founders Club pledge commitment to the Edina Community Foundation and your first annual pledge payment of $5,000. You may remember that 1/4 of that will be designated for our endowment, 1/2 for our general program services and operations and 1/4 for program service grants to worthy programs in the community. Your continuing support of all these areas is very important to our continued success in our mission of Strengthening Our Community.

I think you would enjoy visiting our recently improved website—edinacommunityfoundation.org-- to see the range of programs we're able to provide to the community with your support. You can also see some brief bios of our current Board members and view your significant role in our Foundation as Founders Club members by clicking on Contributions and then Sustaining Donors.

You have not received any tangible consideration or compensation for this contribution, although we will do our best to feature your company as one of the local firms that play a key role in making our community work possible. We are a 501 (c) (3) organization approved by the Internal Revenue Service and the Minnesota Attorney General, and our Federal ID # is 41-1315037.

Thank you for your generous contribution, and please contact me if you have any suggestions for how we might better serve the Edina community. We'll be scheduling another Donors Reception later this year and I hope to see both of you there.

Sincerely,

Dick Crockett
Executive Director

cc: Peter Dahl

5280 GRANDVIEW SQUARE · EDINA, MINNESOTA 55436 · (952) 833-9573 · FAX: (952) 833-9575
edfoundation@ci.edina.mn.us www.edinacommunityfoundation.org

CROWN BANK

6600 FRANCE AVENUE SOUTH, SUITE 125
EDINA, MINNESOTA 55435

April 12, 2012

Mr. James Hovland, Mayor
% City of Edina
4801 West 50th Street
Edina, MN 55424-1394

RE: JMS Companies

Dear Mr. Hovland.

The following summarizes Crown Bank's relationship with JMS Companies. The affiliates and principals of JMS and potential construction / development financing for the site located at 6120 Brookview, Edina, MN.

Crown Bank has had a long term relationship with JMS and more specifically the principals of JMS, Jeff and Nancy Schoenwetter, spanning over 10 years. All past loan obligations and construction projects have been handled as agreed. I can tell you that JMS and its affiliates are a long standing construction / development company and have a strong reputation in the Edina, Eden Prairie, Minnetonka and Savage communities. They have significant experience and knowledge in each community where they have built homes and developed communities.

Currently Crown Bank has several projects with JMS and affiliated companies with total loan commitments in excess of $3M. This exemplifies our confidence in JMS. In all instances both historically and currently JMS has delivered results as agreed. JMS is a valued client of our bank. All JMS projects are completed within budget and ahead of schedule.

Please do not hesitate to contact me at 952-285-2721 should you have any other questions.

Sincerely,

Kevin Howk
President

NORTH AMERICAN BANKING COMPANY

April 12, 2012

RE: Reference Letter for
Jeff and Nancy Schoenwetter/JMS Custom Homes, LLC

To Whom It May Concern:

Please accept this as a reference letter for Jeff and Nancy Schoenwetter and their various companies including JMS Custom Homes, LLC. I am quite familiar with their respective financial histories as they have been clients of mine for well over 20 years.

In my capacity as a commercial lending officer at several financial institutions during that span of time, I have provided them with financing for numerous residential development and home construction projects. All past deposit accounts and loan obligations have been handled as agreed.

Jeff and Nancy have significant experience and knowledge in residential real estate, whether it be in sales, developing new residential neighborhoods or building homes in existing community neighborhoods.

Please feel free to contact me at (612) 455-1126 should you have further questions.

Sincerely,

Joe H. Arends
Sr. Vice President
North American Banking Company

Miroslava (Mickie) Turk
6141 Brookview Avenue
Edina, MN 55424
mturk@isd.net
952-925-2352

April 13, 2012

Dear City Council Members,

I am strongly objecting to a proposed subdivision of the property of 6120 Brookview Avenue, by JMS LLC. This company and its owner come to you with unclean hands, having hoodwinked the city once already, by ignoring the code of proper front setback and pouring a concrete foundation at below temperatures set by the state.

Hoping for a future grant of a subdivision, JMS LLC built a gargantuan house on the south side of 6120 Brookview Avenue—on a 100-foot lot—using an illegal front setback. JMS LLC also cut down two mature oak trees and destroyed the view of the park for the Whitbecks, who own the historic and oldest home in Edina, next door.

Edina's minimum lot width as stated in the city code, is 75 feet. Please do not grant JMS LLC a variation on this sound and principled code, as it will forever change the appearance and unity of the neighborhood, while causing hardship for nearby homeowners who will have to start living smashed in, between out-of-place houses.

A builder stands to gain only monetarily and only in the short term. He or she will not actually live in the neighborhood. But the entire neighborhood will suffer damage for a long time to come. People will lose their unobstructed view of the street and trees, and the ability to live harmoniously and in privacy next door to others in houses of similar structure and size. On the economic side, the smaller houses will continue to lose value forcing middle class folks to move away from Edina where they have nearby employment and their children are enrolled in school.

The ideal scenario would be for JMS to move the 6120 Brookview house to the center of the lot. Short of that, the company has a wonderful opportunity to landscape the side lot and make the property once again, beautiful for the neighborhood. JMS has let it go too long.

Respectfully,

Mickie Turk

Jackie Hoogenakker

From: Joe Clay <j.c.35@live.com>
Sent: Thursday, April 12, 2012 5:36 PM
To: Jackie Hoogenakker
Subject: Sub-division

Dear Edina City Council,

I wish to protest any division of the lot on which the house across the street from our house is located.
I opposed the sub-division when JMS builders first cut down the 2 healthy oaks a few years back & removed the nice house that fit into the neighborhood & built a large structure that resembles a warehouse. I still oppose any sub-division of that lot. Recall I told the parable of "the Arab & the camel's nose." That story is still has merit.

Rev. Joseph P Clay
6117 Brookview Ave
Edina, MN 55424
952-920-6952

4.12.2012

Jackie Hoogenakker

From: J Victorsen <jvictorsen@earthlink.net>
Sent: Thursday, April 12, 2012 4:16 PM
To: Jackie Hoogenakker
Subject: Neighbor Input on Case File #2008.0002.12a

To Whom It May Concern,

I am writing in support of the subdivision.

In a land planning sense, a park, such as Pamela, should be a vital, vibrant place for children. It should be close enough for them to walk to it, dragging their sleds, to run to a soccer game, or bicycle to without their parents present. This block of Brookview is ideal for that scenario, because Pamela Park is easily and safely accessible; there are no heavily-trafficked streets to cross.

That being said, this location on Brookview also has very convenient automobile accessibility, being within two blocks of both West 62nd Street and Valley View Road, and within four blocks of Crosstown Freeway.

The first home, which my wife and I owned is 4544 France Avenue South. It's lot was similar in width to the proposed lot, and not much different in depth. It was very adequate for our household. (We moved because it was isolated and we felt our children were dangerous to the traffic on France Avenue. I am pleased to see sidewalks installed...twenty years later).

Because of the prime location of 6120 Brookview, it is my opinion that JMS Custom Homes should be allowed to subdivide Lots 5 and 6, and given the requested variances. It does not make sense in today's world, to restrict such a fine location to single-family homes with large lots.

Sincerely,
Jon R. DeMars Victorsen

P.S. I am a co-owner of the twinhome at 4242-44 Valley View Road and a partner of Oaklawn Estates, the apartment building located at 4401 Valley View Road. As a child, I lived at 6220 Brookview and I am well acquainted with this property.

Jackie Hoogenakker

From: barbara nelson <barbellen6@earthlink.net>
Sent: Thursday, April 12, 2012 4:17 PM
To: Jackie Hoogenakker
Subject: JMS Subdivision of 6120 Brookview
Attachments: 6120 Brookview letter 3912.pages

To: Edina City Council
Planning Department
Planning Commission

RE: Opposition to 6120 Brookview lot subdivision

DATE: April 12, 2012

I am writing to express my strong opposition to allowing the JMS company to subdivide the lot at 6120 Brookview across the street from my property where I have lived for 23 years. I am sure that you have received many letters expressing all the legal reasons why my neighborhood is opposed to this. So I will just write from my heart that I am feel the initial lenience in favor of JMS allowing the building of the oversized house at 6120 Brookview has been a huge mistake. The placement of the house off center only 5 feet from the property line of the Whitbeck's historical Edina home is ridiculous as anyone who sees the house knows. I remember Mr. Schoenwetter claiming that he just chose this placement for no reason! It seems to me that he has manipulated and deceived the City and in turn all of the neighbors as to his intentions to maximize his financial gain from the beginning. Now, after this home is still not selling 2 years later and all that has gone on in terms of carefully researched objections in the face of his bullying behavior, to allow him to get his way is just not right. It is a betrayal of the trust of all of us taxpayers and loyal residents of this neighborhood. Please take a stand.

Thank you for your consideration.

Sincerely,

Barbara E Nelson
6137 Brookview Ave S
Edina, MN 55424

ben

To: Edina City Council
Cary Teague& Kris Aaker, Planning Dept.
Scott Neal, City Manager

April 13, 2012

From: Janey Westin & Charlie Hughes
6136 Brookview Ave., Edina

Re: Proposed Subdivision of 6120 Brookview Ave., Edina; Fairfax, Block 23, Lots 5 & 6
Jeffrey Schoenwetter of JMS Custom Homes

City Council Members and City Staff,

We are **strongly** opposed to this proposed lot division.

The City has Zoning Ordinance, Subsection 850.07, Subd. 20B4a which states: "If a non-conforming lot or parcel is, or at any time since October 22, 1951, has been, held in common ownership with all or part of an adjoining or abutting parcel or lot which together comply with, or come close to complying with, the minimum width, depth, area, and lot width to perimeter ratio, requirements of this Section, then such non-conforming lot or parcel and such adjoining or abutting parcel or lot shall be considered as ONE LOT and SHALL NOT BE DECREASED IN SIZE below such minimum requirements. If in a group of two or more adjoining or abutting lots or parcels owned or controlled by the same person, any single lot or parcel does not meet the full minimum depth, width, area or lot width to perimeter ratio requirements of this Section, such single lot or parcel shall not be considered as a separate lot or parcel able to be conveyed and developed under this code." The city minimum lot width is 75 feet.

The City of Edina must follow the City's own laws and ordinances to protect home owners from intimidation and reckless harm from developers like JMS who demonstrate absolutely no consideration of neighboring homeowners. The history of how JMS has behaved regarding 6120 Brookview Avenue is a case in point:

Late spring of 2008-- Another developer (Palaudian/Bravura) attempted to divide 6120 into two 50 foot wide lots. He had a purchase agreement with a contingency of subdivision, planning to build 2 large houses and cut down a healthy, 91 foot spanning oak tree in the process. The neighborhood strongly objected, and it was not approved. The City followed Zoning Ordinance. JMS's then-president, Andy Porter, attended the proceedings. Mr. Palaudian then backed out of the purchase agreement. Within 2 days, JMS had bought it, before any neighbors could take other action. JMS then submitted plans to the City for a large, single home to be built, somewhat centered on the lot, (though too close to the street with a setback of 33 feet), but did not begin construction.

Early October, 2008-- JMS approached Jim Holan, Property ID Supervisor for Hennepin County, attempting to divide 6120 Brookview at the County level. Edina City Planning was called and alerted; JMS did not get a lot division because he had not applied for one, as required by Edina ordinance. Shortly thereafter, the existing rambler was removed by Otting House Movers (hired by JMS) and the large, healthy oak tree cut down. The open hole of the block wall basement remained with no fencing around it for more than 10 days through Halloween weekend, in spite of my phone call to City Inspections.

Fall of 2008-- JMS then submitted new plans which were approved by Planning, for a full two story home of extremely large size, and completely out of character and proportion to anything within 500

feet (the 'neighborhood' as defined by city ordinance). Mr. Schoenwetter had his surveyors place this new house completely within the south half of the parcel (Lot 6) as if JMS Custom Homes had a lot division, which JMS did not. JMS also had his surveyors position the house 8+ feet closer to the street than front setback code allowed. This position put the back wall of the JMS house further forward than the front north corner of the neighboring historic Whitbeck home to the south. This positioning completely robs the Whitbecks of any peace of mind when coming and going from their front door. It does NOT improve with the passage of time, and frankly, has a 'creepy' feeling about it. JMS has pled ignorance of understanding setback code, though this was the 35th or 36th home he built in Edina. In court, he also blamed this on his surveyor, though as the agent for his surveyor, JMS is the responsible party. From the moment the survey stakes were put in the ground in early December of 2008, it was clear that JMS's intent was to force the City to grant a subdivision of the property. A letter to the City in warning of this was written by neighbor and lawyer Joe Lawver (living directly across the street). It was read aloud as correspondence at the early December 2008 Planning Commission meeting. Not much comment was made, and it seems to have been basically ignored.

December 22, 2008-- JMS applied to the City for a building permit for the north half of 6120 Brookview, Lot 5. He had not applied for a subdivision. The permit was turned down, and noted in a memo of the same date, on file in Planning.

JMS proceeded with construction on the south half of the parcel in December, 2008. The foundation was poured on the coldest day of that winter, when temperatures were way below code rules for concrete. It was not tented or blanketed, violating state concrete construction code. Nonetheless, it passed inspection, and construction continued. The Whitbecks, spoke with City Planning people and expressed concern with position of the house. Construction continued to the point of the wood frame shell being completed and the roofing materials half on.

Finally, in early January 2009, after more complaints by the Whitbecks regarding position of the house, a stop work order was placed on the house by the City, and it was determined to be way too close to the street, by about 8 feet. JMS applied for a variance to allow the house to be as it sat, which was not granted. JMS also took the City to court to be allowed to continue construction, pleading that he would go out of business if the house couldn't be ready for the Spring 2009 Parade of Homes. After doing research, it seems that JMS's financial problems were due to numerous failed development projects, bankruptcies and lawsuits-- not this single house project. The Whitbeck's, the most affected party regarding this new JMS house, were not informed of JMS's first court appearance, and had no voice in the proceedings. The judge allowed JMS to proceed with construction. Construction usually started at 6:00-6:30 am, in violation of city code.

The house was finished and open for the Parade of Homes in February, 2009. It did not sell. In the fall of 2009, Nancy and Jeffrey Schoenwetter listed the house for sale through Prime Real Estate Services describing it as sitting on a 50 foot wide lot, not as a 100 foot wide lot. This was a clear violation of 3 Ethics rules of the Minnesota Association of Realtors. It was fraudulent information. No application for subdivision had been applied for. In an October 8, 2009 letter to Mr. Schoenwetter, former Edina City Manager Gordon Hughes advised Schoenwetter to accurately list the property size of 6120 Brookview Avenue. Jeffrey Schoenwetter sent a reply October 26th, stating, "We do understand and respect your interpretation of city code. We may not necessarily agree with this interpretation." Interpretation??!!

The Schoenwetters found a party to sign a 2 year contract for deed type of arrangement in December, 2009. At the end of the 2 years, in December, 2011, they moved out, not proceeding with the contract.

So, here things sit, with an oversize, completely out of place house, that could still be moved to the center of the 100 foot wide lot. Yes, this is possible. I have spoken with Otting House Movers, the company that moved the original home off the lot. They have experience moving houses, even 2 story houses, to a new position on an existing lot. It would not cost more than about $50,000 total (new foundation, water, sewer and moving). There are no obstacles on this lot that would hinder this type of repositioning.

A Solution-- Since the City of Edina is half responsible for the current position of this house that does not sell, and clearly imposes on the Whitbeck home to the south, it is time for the City to work out a purchase of the home from JMS, minus moving costs. The City then takes care of moving it, and then sells it at little or no loss. As it sits, it costs JMS in taxes, financing and maintenance costs, year after year. It is an embarassment to the City of Edina. The neighbors have done no wrong here. If the house were centered sensibly on the lot, it would sell, and give relief to the Whitbecks and the neighborhood.

The City has purchased 'problem' properties before. An example is the former Roster's U-Haul/gas station at 4416 Valley View Rd., purchased by Edina in May of 2002. The City still owns this property and has no tax revenue from it.

Schoenwetter has clearly created his own hardship. He has a reasonable use of the property with one house on it. His 'practical difficulty' is the position of the existing house, which he and the City are responsible for and which can be remedied. Strangers that come by this house stop and ask us, 'What is it with the position of that house?'. JMS has thumbed his nose at City ordinances, seeming to think the 'rules' don't apply to him. He is not acting as a responsible developer, and should not be granted this request for a subdivision.

The JMS house at 6120 Brookview Ave. is a problem that CAN be solved with enough political will. It is a 'wrong' that CAN be made right. Get the house moved to the middle of the lot.

Janey Westin & Charlie Hughes