



AGENDA
REGULAR MEETING OF THE
WINDSOR HEIGHTS BOARD OF ADJUSTMENT
Tuesday, April 23, 2024 - 5:30 PM
WINDSOR HEIGHTS COUNCIL CHAMBERS - 1133 66th ST
ZOOM: <https://us02web.zoom.us/j/7832856334>
Meeting ID: 783 285 6334

1. **Call to Order/Roll Call**
2. **Approval of Agenda**
3. **Approval of Minutes:**
 - A. 3.20.24 Minutes
4. **Approval of Rules of Procedure for Board of Adjustment**
 - A. Attachments
5. **Public Hearing on Conditional Use Permit - 6500 Hickman Rd**
 - A. Staff Report and Application Materials
6. **Consideration of Conditional Use Permit - 6500 Hickman Rd**
7. **Consideration of Variance Request - 6500 Hickman Rd**
 - A. Staff Report and Application Materials
8. **Adjourn**

The agenda was posted on the official bulletin boards, posted to www.windsorheights.org, and city social media platforms in compliance with the requirements of city ordinances and the open meetings law.



AGENDA
REGULAR MEETING OF THE
WINDSOR HEIGHTS BOARD OF ADJUSTMENT
Wednesday, March 20, 2024 - 5:30 PM
WINDSOR HEIGHTS COUNCIL CHAMBERS - 1133 66th ST
ZOOM: <https://us02web.zoom.us/j/7832856334>
Meeting ID: 783 285 6334

1. Call to Order/Roll Call

Meeting called to order by Chair Chaden Halfhill at 7:12 PM. Members present: Carole Tillotson, Paul Walter, and John Villotti. Members absent: Donna Markley. Staff present: Deputy City Clerk Nate Leuthold

2. Approval of Agenda

Motion by Carole Tillotson to approve. Seconded by John Villotti. Motion passed 4-0.

3. Approval of Minutes:

Motion by Paul Walter to approve. Seconded by John Villotti. Motion passed 3-0. Yea: Chaden Halfhill, John Villotti, and Paul Walter. Abstained: Carole Tillotson.

A. 2.21.24 Meeting Minutes

4. Approve Board of Adjustment Rules and Procedures

Motion by Carole Tillotson to table the approval of the Rules of Procedure until such a time that the City Attorney can review the proposed Rules. Seconded by Paul Walter. Motion passed 4-0.

5. Adjourn

Motion by Carole Tillotson to adjourn at 7:16 PM. Seconded by Paul Walter. Motion passed 4-0.

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AGENDA
REGULAR MEETING OF THE
WINDSOR HEIGHTS BOARD OF ADJUSTMENT
Wednesday, March 20, 2024 - 5:30 PM
WINDSOR HEIGHTS COUNCIL CHAMBERS - 1133 66th ST
ZOOM: <https://us02web.zoom.us/j/7832856334>
Meeting ID: 783 285 6334

1. Call to Order/Roll Call

Chair Chaden Halfhill called the meeting to order at 5:40 PM. Members present: Carole Tillotson, Paul Walter. Members absent: John Villotti and Vice Chair Donna Markley. Staff present: Deputy City Clerk Nate Leuthold. John Villotti joined the meeting at 5:50 PM.

2. Approval of Agenda

Motion by Chaden Halfhill to approve. Seconded by Carole Tillotson. Motion passed 3-0.

3. Work Session: Rules of Procedure

Nate Leuthold presented the Rules of Procedure of Nevada, Iowa, and presented the changes he had made to the document to reflect Windsor Heights rather than Nevada, as well as proposed changes from Carole Tillotson. The Board accepted the changes. Carole Tillotson asked about Board term lengths. Staff to provide. Removed the Reports section from 2.6, the required order of business. Broke 2.7 into sections to make it more readable and removed the requirement to state why a member is abstaining from voting. Updated 2.10 to reflect the latest edition of Robert's Rules of Order and to reflect that the secretary shall be the parliamentarian. Simplified section 3.0 to reduce redundancy with City Code. Removed sections 4.1 to 4.3, 4.5, and 4.6 to reduce redundancy with City Code. Replaced 4.8 a-g with staff-recommended procedures and added clarification to 4.8 in general. Updated verbiage to reflect "motions" rather than "resolutions," "matters" rather than "cases," and "Board of Adjustment" rather than "Board" throughout the document. Broke section 4.14 into sections. Removed section 4.15. Broke section 4.16 into subsections. Renumbered the subsections in section 4 to reflect the changes. Reworded section 5 for brevity and clarity. Updated "Informal Advice" to "Advisory Opions" in section 7.0. Referred the redlined document to staff for review.

A. Attachments

4. Adjourn

Motion by Paul Walter to adjourn at 7:12 PM. Seconded by John Villotti. Motion passed 4-0.

The agenda was posted on the official bulletin boards, posted to www.windsorheights.org, and city social media platforms in compliance with the requirements of city ordinances and the open meetings law.

**BOARD OF ADJUSTMENT
GOVERNING BODY RULES OF PROCEDURE**

AUTHORITY

In compliance with Iowa Code Section 414.9 ~~and the Code of Ordinances and Windsor Heights Code, Section~~Chapter 179.02 MEETINGS, which states that The Board of Adjustment shall adopt rules and regulations in accordance with this Zoning Code and the Code of Iowa, the following rules of procedure are hereby adopted by the Windsor Heights Board of Adjustment.

The following shall be in effect upon their adoption by the Board and until such time as they are amended, or new rules adopted.

Adopted on: 3/20/2024 by Resolution No. _____

1.0 OFFICERS

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Section 1.0 – OFFICERS The Windsor Heights Board of Adjustment shall select from its membership a Chair and Vice-Chair who shall perform the usual duties pertaining to such offices.

Section 1.1 – SELECTION At the first regular meeting of each fiscal year the Board will pick its officers from its membership. All officers are eligible for re-election.

Section 1.2 – TENURE The chair and vice-chair shall take office immediately following their election and shall hold office for a term of one year or until their successors are selected and assume office.

Section 1.3 – DUTIES The chair shall preside at all meetings and hearings of the board, shall decide all points of order or procedure, and shall appoint any committees that may be found necessary. The vice-chair shall assume the duties of the chair in the absence of the chair.

Section 1.4 – STAFF SUPPORT The City Administrator will designate city staff person(s) to serve as the secretary and provide staff support for the Board. The designated person(s) shall conduct all official correspondence subject to these rules at the direction of the Board, shall send out all notices required by these rules of procedure, keep the minutes of the Board's proceedings, keep a file on each case-matter that comes before the Board. For all appeals and applications, the designated staff person(s) shall issue the proper forms; see that information, maps and plats are compiled and ready for Board's review; notify any property owner and other interested parties by mail of the time and place of the hearing; and any other duties as determined by the Board.

Commented [NL1]: Changed each instance of "case" to "matter" as we do not have case numbers

2.0 MEETINGS

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Section 2.0 – MEETINGS —The annual meeting of the Board will take place at the first regular meeting of the fiscal year. Regular meetings of the Board of Adjustment shall be held at 10:00 a.m. to 5:30 p.m. on the Tuesday following the second Monday third Wednesday of each month unless no cases-matters are pending in which case no meeting shall be held. The secretary shall give each member of the Board seventy-two hours' electronic notice of such meeting by delivery or mail.

Section 2.1 – SPECIAL MEETINGS —Special meetings may be called by the chair or at the request of three members of the Board. Notice of the special meeting shall be given by the secretary to the members of the Board at least forty-eight hours prior to such meeting and shall state the purpose and time of the meeting.

Section 2.2 – QUORUM —A quorum of the board shall consist of three members.

Section 2.3 – PUBLIC All regular, special and subcommittee meetings; public hearings; records; and accounts shall be open to the public. The Board may hold a closed session to consider or hear any matter which is authorized by state law to hear or consider in closed session.

Section 2.4 – NOTICE OF MEETINGS Public notice will be given for all meetings of the Board. The notice shall give the time, date and place of each meeting and its tentative agenda. Notice of meetings will be sent to the Board members and the local paper posted as required by law.

Section 2.5 – AGENDAS At least twenty-four (24) hours before a meeting, copies of the Board's tentative agenda shall be posted. The Board may not take action on any item that did not appear on the posted tentative agenda unless an exception is provided under Iowa law. The chairperson may rearrange the order of business appearing on the agenda as he or she may deem necessary to conduct the meeting.

Section 2.6 – ORDER OF BUSINESS The secretary shall prepare an agenda for each meeting and send it to each board member as part of the notification process (72 hours prior). The order of business shall be

as follows:

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of Previous Meeting
4. Public Hearing and Decision on [CaseMatter\(s\)](#)
5. [Reports](#)
- 6-5. Adjournment

Commented [NL2]: Removed reports section from required sections, as it is rare. This section will appear in individual agendas, as appropriate, rather than be blank in the majority of agendas.

Section 2.7 – VOTING

- a. ~~The concurring vote of three (3) members of the Board is required to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in the requirements of this chapter.~~ decide any matter before the Board, unless otherwise stated in the City Code. Voting will be by roll call and will be recorded by yeas and nays.
- b. All members of the Board, including the chair, are required to cast a vote for each ~~motion~~ action item. Minutes will show members absent for each vote.
- c. A member may abstain if he or she feels there is a conflict of interest, particularly if the conflict is of a financial nature. ~~If a member elects to abstain from voting, he or she is required to state the reason for his or her abstention at the time of voting.~~ Abstentions due to conflicts of interest shall not count as votes for the purpose of determining whether there has been an affirmative vote of a majority of the members present; but shall be counted for the purpose of determining whether a quorum is present.

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Commented [NL3]: Is there a good legal reason someone should state their reason for abstaining? The Board liked it as a "best practice" rather than a rule.

Commented [EC4]: This is an important sentence as we frequently run into situations where council/board members abstain from voting because it's a controversial issue, not because it's an actual conflict. If the board member abstains because of a conflict, all they would need to say is "I have a conflict." They would not need to identify details of the conflict.

Commented [NL5]: Broke this paragraph into sections for clarity

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Section 2.8 – UNFINISHED BUSINESS When all appeals or applications cannot be disposed of on the day set (due to length of meeting or extenuating circumstances), the Board may adjourn from day to day or until the next regular meeting as the board may decide.

Section 2.9 – BOARD ACTION The Board may not vote on an appeal or application until all required information has been set forth on the forms and until the hearing has been conducted. The Board may postpone a decision on a matter until a later meeting to enable additional testimony to be heard, a site visit, or for other good cause by an affirmative vote of a majority of the members present and voting.

Section 2.10 – PARLIAMENTARY PROCEDURE Roberts Rules of Order, [Newly](#) Revised, [12th Edition](#) will govern the board meetings, unless otherwise provided herein. ~~The secretary shall be the parliamentarian.~~

3.0 BOARD DUTIES

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Section 3.0 – CASES MATTERS TO BE DECIDED BY THE BOARD The Board of Adjustment shall decide those ~~The following cmMatters~~ as set forth in Section Chapters 177, 179 and 180 of the Windsor Heights Code of Ordinances shall be made before the Board of Adjustment on forms provided by the board secretary.

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- a. ~~Appeals, when it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of the zoning ordinance.~~
- b. ~~Special exceptions to the terms of the zoning ordinance upon which the Board is required to act under the ordinance.~~
- c. ~~Variances to a zoning district requirement where there are unusual conditions or circumstances which cause a hardship when the provisions of zoning are strictly applied.~~

Commented [NL6]: These are listed in the cited Code. If code is updated/changed, these rules will need to be edited. It seemed easier to just cite the Code and leave this out to avoid redundancy.

Section 3.1 – EX PARTE COMMUNICATION The outside communication regarding a [project matter](#) to be reviewed by the Board is discouraged. Whereas, the majority of the actions of the Board are quasi-judicial in nature, the parties involved are entitled to the same fairness, impartiality and independence of judgement as one expects in a court of law. Any members of the Board who has been contacted by an applicant, appellant or interested party, shall so note at the beginning of the hearing on any item and should

state what issues were raised and discussed on the request.

4.0 HEARINGS

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Section 4.0 - PROCEDURE FOR HEARING CASES/MATTERS The following rules will apply to all appeals or applications before the Board.

Section 4.1 — APPEALS Appeals to the Board may be taken by any person, group, or by any officer or department of any government affected by any decision of the Zoning Administrator and by applicants for a special exception or variance.

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Section 4.2 — NOTICE OF RIGHT TO APPEAL The Zoning Administrator shall tell the applicant or interested party why the zoning or building permit was denied or why the application is necessary. He or she shall inform the applicant or interested party of the right to apply or appeal to the Board and that it be made within 10 days. Such appeal shall be filed with the Zoning Administrator on the forms provided by the Board of Adjustment. The Zoning Administrator will transmit the completed appeal form along with all papers constituting the record upon which the Board shall act.

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Section 4.3 — APPEAL FORMS The applicant shall complete the required forms, providing all information requested by the form and any additional information as requested by the Zoning Administrator.

Commented [NL7]: All of these are covered in the Code.

Section 4.14 REJECTION OF APPEAL The secretary of the board shall reject any such application or appeal that is not filed within 210 days of the Zoning Administrator's decision. Also, the secretary shall reject any such application or appeal unless same are made on prescribed forms properly filled out, with all required data attached.

Section 4.5 — CASE NUMBERS An application or appeal filed according to the above procedure shall be given a case number within five (5) working days from the date filed. Applications or appeals will be assigned in the order in which they are received.

Section 4.6 — PUBLIC NOTICE The secretary of the board shall notify the parties of interest (property owners of record within 200 feet of the applicant's lot lines) by mail of the time, place, and purpose of the public hearing, and give a minimum of seven days public notice in a newspaper of general circulation between seven (7) and twenty (20) days before the meeting date.

Commented [NL8]: Same as above: another section covered by Code.

Section 4.27 PUBLIC HEARING At the time of the public hearing the applicant may appear in his or her own behalf and/or be represented by agent or counsel. In the absence of any personal appearance on behalf of the applicant, the Board will proceed to dispose of the matter on the forms and information provided before in advance.

Section 4.38 ORDER OF HEARING The order of the hearing shall be as follows:

- a. City staff will present their report and recommendation.
- b. The applicant will be given 10 minutes to present the request.
- c. Members of the public are then allowed to speak, with each speaker allowed a maximum of 5 minutes. Speakers must introduce themselves, including their name and address.
- d. The applicant is then allowed five (5) minutes for a rebuttal.
- e. The hearing will then be closed, and the Board of Adjustment will discuss and vote on the issue.
- f. All comments are to be germane to the item under consideration and speakers are to maintain a courteous manner.
- a. The applicant's or appellant's side of the case
- b. Zoning Administrator's side of the case
- c. Interested property owners' opinions

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- d. ~~Applicant's rebuttal~~
- e. ~~Questions of applicant or appellant by the Board~~
- f. ~~Questions of Zoning Administrator by the Board~~
- g. ~~Action by the Board of Adjustment~~

Public discussion/hearing may be reopened at any time during the meeting to permit additional testimony and evidence, including by staff, either to permit reconsideration of an action or for any other reason at the discretion of the Chairperson.

Section 4.49 RULES OF EVIDENCE Hearings before the Board need not be conducted according to formal rules of evidence. Any relevant testimony may be considered if it is the sort of testimony upon which reasonable persons may rely. The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings while ensuring basic fairness and full consideration of the issues involved.

Section 4.405 BURDEN OF PROOF The burden of proof of any legal prerequisites to the granting of the relief or action sought shall be upon the party requesting such relief or action.

Section 4.446 QUESTIONING OF SPEAKERS Any person other than the Board desiring to direct a questions to a speaker or staff member shall submit the question to the Chairperson, who shall determine whether the question is relevant and whether or not it should be answered. Direct questioning of speakers or staff members may be allowed in extraordinary circumstances, at the discretion of the Chairperson.

Section 4.427 DELIBERATION After the hearing, the Board shall deliberate the casematter. The Board may ask its attorney for comments.

Section 4.813 WITHDRAWAL The applicant or appellant may withdraw his or her application or appeal at any time prior to the decision by the Board of Adjustment.

Section 4.914 FINAL DECISION Final decision of any application or appeal shall be made in the form of a resolution ~~motion~~ resolution by anyone on the Board of Adjustment.

- a. The resolution ~~motion~~ may affirm, modify, or reverse ~~the refusal of a permit by~~ the decision of the Zoning Administrator.
- b. In the case of an application for variance or special exception ~~conditional use permit~~, the resolution ~~motion~~ resolution shall set forth that the application is granted or denied, and
- c. Ssaid resolution ~~motion~~ resolution shall specifically set forth what variances or special uses are permitted and what conditions, if any, shall be complied with.

Section 4.15 MOTIONS FOR RECONSIDERATION ~~Motions for reconsideration of a matter may be made only by a member who voted with the prevailing majority on the matter to be reconsidered. Any member of the Board may second a motion to reconsider. Motions to reconsider shall be made at the same meeting as the original motion. If the matter to be reconsidered was considered at a public hearing, the public hearing will be reopened before additional evidence may be heard.~~

Section 4.105 NOTIFICATION Within fifteen days after the hearing the Zoning Administrator shall notify the parties of interest of the Board of 'sAdjustments' decision.

Section 4.113 REHEARING A rehearing of any decision of the Board of Adjustment may be made if the following occur:

- a. The motion to rescind is made by a member of the Board and carried by not less than four affirmative votes.
- b. New evidence is submitted that could not reasonably have been presented at the original meeting;
- c. At least 90 days have elapsed since the resolution was defeated; and the case-matter is put on the agenda for a rehearing.

Commented [NL9]: We replaced the order with what Adam P suggested with some tweaks from the Board members.

Commented [EC10]: WH Code §179.06 requires a resolutuiont

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Commented [NL11]: We broke this paragraph into sections for clarity

Commented [NL12]: This is also covered in the Code.

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Commented [NL13]: We broke this paragraph into sections for clarity

5.0 RECORDS The secretary shall keep ~~books-files of all minutes, forms, and additional information as a part of the legal record, showing the status of all cases and minutes as part of the records of the Board of Adjustment. In addition, the secretary shall keep a file of all cases including forms and additional information as a part of the legal records.~~

Commented [NL14]: Edited down for clarity

6.0 AMENDMENTS A majority vote of all the members of the Board of Adjustment shall be necessary to amend these procedural rules. Such proposed amendments shall be presented in writing at any regular meeting of the Board of Adjustment.

7.0 INFORMAL ADVICE/ADVISORY OPINIONS The Board of Adjustment will not ~~consider a request (informal or not) for advice~~ provide advisory opinions on theoretical or actual situations that potentially may come before the Board as an appeal or application.

Commented [NL15]: Rephrased for clarity

STAFF REPORT

Date: April 17th, 2024
To: Windsor Heights Board of Adjustment
From: Justin Ernst, PE
Trey Rouse
Subject: Conditional Use Review: Residential, Multi-Family Staff
Report (6500 Hickman Road)

General Information

Applicant: Mila Schwarz
POB 65653
West Des Moines, IA 50265
Property Owner: Windsor Court Apartments LLC
(Mila & Tony Schwarz)
Proposed Use: Residential, Multi-Family
Zoning: CC District (Community Commercial)
Location: 6500 Hickman Road

Summary

The applicant, Mila Schwarz, is requesting a conditional use permit in CC District (Community Commercial District) for the use of the property listed at 6500 Hickman Road to change from its current use of “Hotel/Motel” to “Residential, Multi-Family” to be a series of long-term residential dwelling units that will be located along Hickman Road. The CC District (Community Commercial District) allows for the Residential, Multi-Family use to be approved conditionally. Staff has completed a review of the conditional use permit application. The submitted application materials are attached to this report.

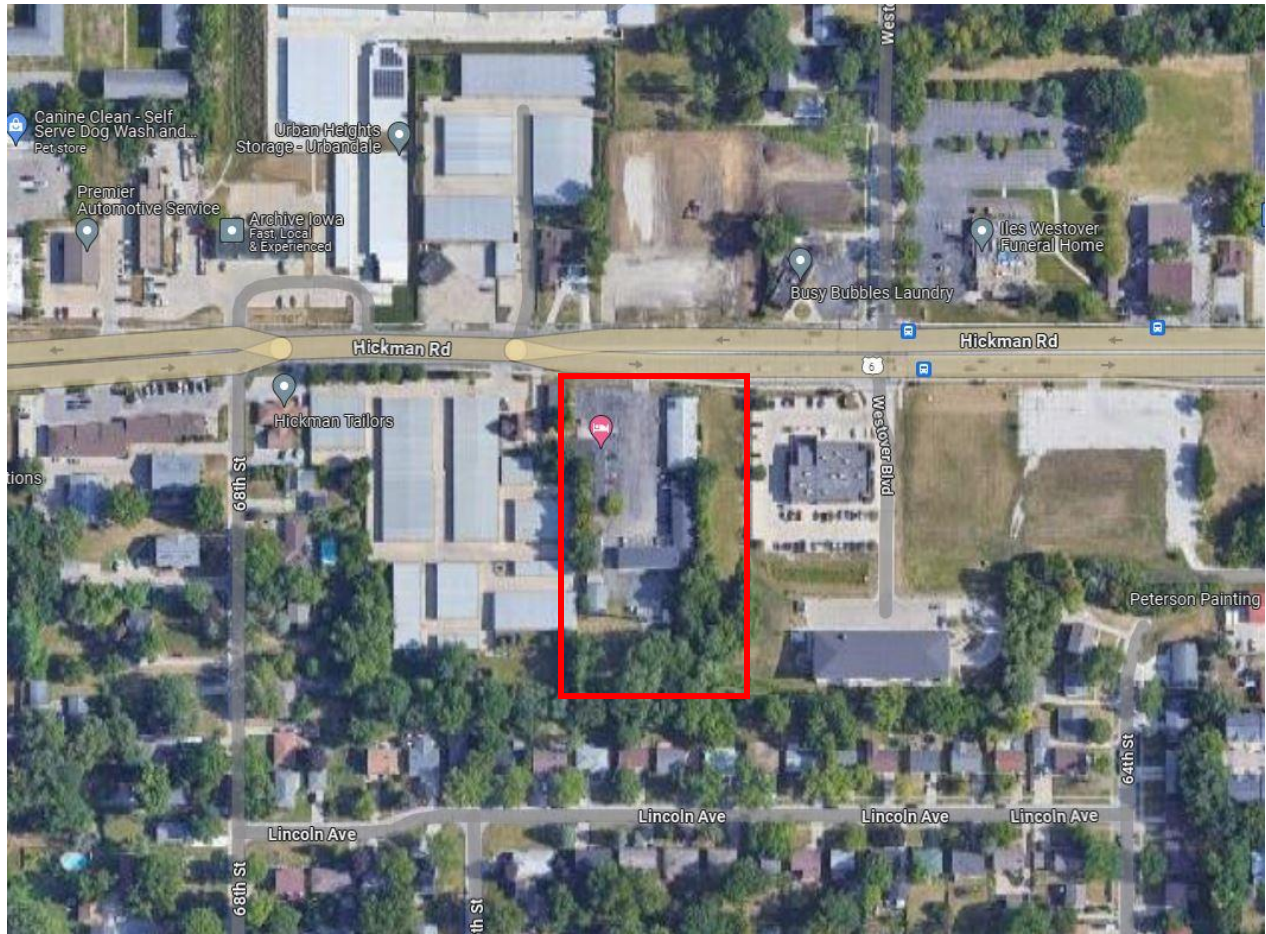
Narrative From Applicant on Request

Please see attached narrative within provided documentation attached to the Conditional Use Permit Application.

Existing Conditions

The 4.75-acre lot is in the CC – Community Commercial Zoning District. The lot currently has six (6) complete structures that make up 13,539 sq. ft. of Hotel/Motel rooms and office space on the property, defining its primary use. There is available off-street parking located throughout the center of the property and open space can be found on the south and east sides of the property. This property has one full-access driveway onto the property from Hickman Road. All existing structures are proposed to remain with their current footprint.

Property Location and Surrounding Properties



Legal Description of Property

EX N 2.5F LTS 7 & 7 1/2 & N 15.5F LT 8- & -EX

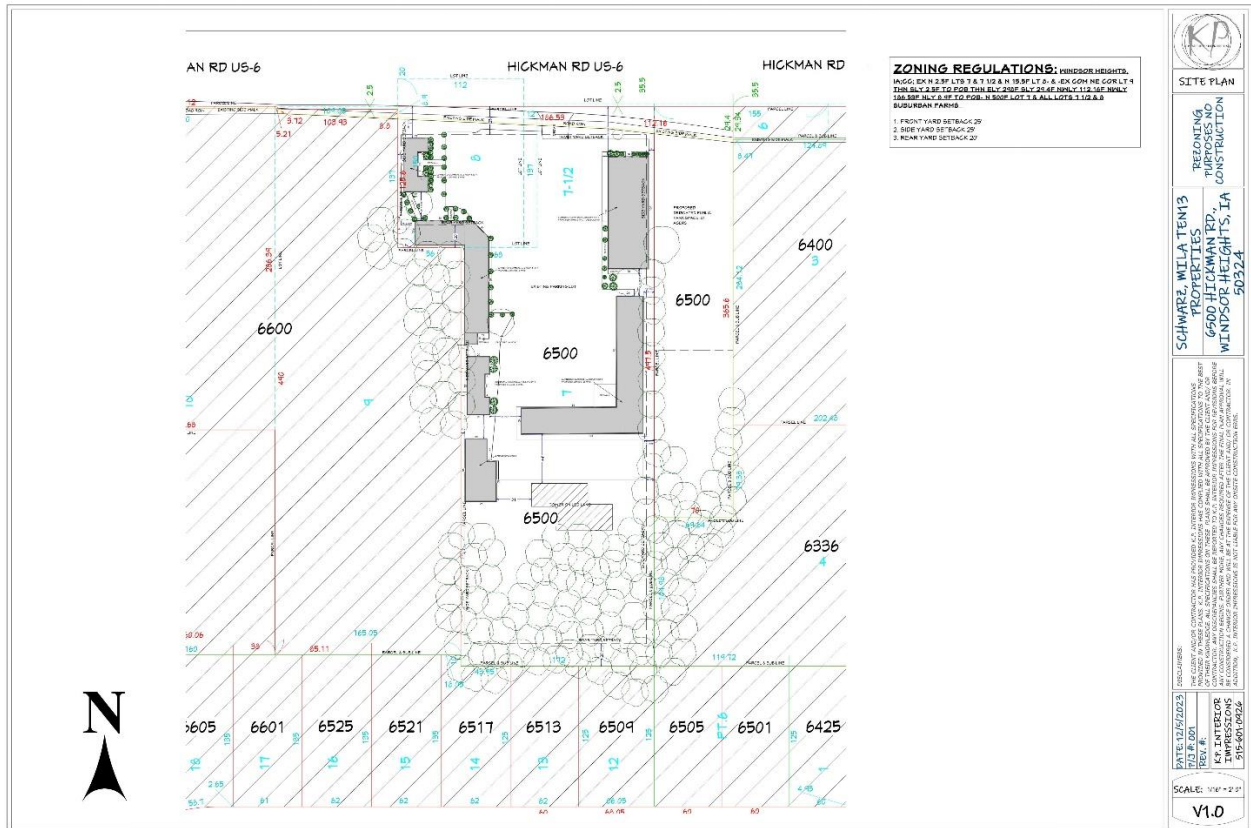
COM NE COR LT 9 THN SLY 2.5F TO POB THN ELY 298F

Sly 29.4F NWLY 112.16F NWLY 186.53F NLY 8.9F TO

POB- N 500F LOT 7 & ALL LOTS 7 1/2 & 8 SUBURBAN

FARMS

Preliminary Site Plan for Development



Background

September 9th, 2023: Discussion with City Staff Submittal of Conditional Use Permit

February 29th, 2024: Confirmation of Conditional Use Permit Materials

Applicable Code Sections

166.03 Definitions of Terms

189 (e). “Residential, Multi-Family” means a residential use with more than three units on a single lot in which all units do not contain at least one common wall with another unit. Units do not have to contain a common wall and may be above or below each other. Also known as Residential, Multiple-Family.

Table 168-2 Permitted Uses by Zoning District

Use Types	R-1	R-2	R-3	MH	CC	UC	LI
Medical Offices			C		P	P	P
Mobile Home Park				C			
Off-Street Parking					C	C	P
Parking Structure					C	P	P
Parks/Recreation	P	P	P	P	P	P	P
Pet Services					P	C	P
Postal Facilities					P	P	P
Primary Education	P	P	P	P	P	P	
Public Assembly	P	P	P	P	P	P	
Railroad Facilities							P
Recycling Collection					C		P
Recycling Processing							C
Repair Services							P
Research Services					P	P	P
Residential, Accessory Dwelling Unit	C	P	P				
Residential, Downtown						P	
Residential, Duplex	C	P	P			P	
Residential, Multi-Family		C	P		C	P	
Residential, Single-Family Detached	P	P	P	P		P	

Chapter 180.06 Standards of Approval

1. The Board of Adjustment shall review the proposed development for conformance to the following Standards of Approval:
 - a. Compatibility. The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious, or offensive in appearance to abutting or nearby properties.
 - b. Transition. The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.

- c. Traffic. The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.
 - d. Parking and Loading. The development shall provide all off-street parking and loading areas as required by this ordinance, and adequate service entrances and areas. Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.
 - e. Signs and Lighting. Permitted signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.
 - f. Environmental Protection. The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.
- 2. The request shall be approved if the Board of Adjustments finds that the proposed development meets all Standards of Approval.
 - 3. The request shall be denied if the Board of Adjustment finds a strong probability that any of the following with regards to the proposed development:
 - a. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or
 - b. Impair an adequate supply (including quality) of light and air to surrounding property, or
 - c. Unduly increase congestion in the roads, or the hazard from fire, flood or similar dangers, or
 - d. Diminish or impair established property values on adjoining or surrounding property, or
 - e. Not be in accord with the intent, purpose and spirit of the zoning ordinance or comprehensive plan.

Chapter 180.08 Board of Adjustment Action on Applications

1. In considering whether to approve an application for a conditional use permit, the Board of Adjustment shall proceed according to the following format:
 - a. The Board of Adjustment shall establish findings of fact based upon information contained in the application, the staff report, and information gathered at the Board of Adjustment hearing.
 - b. The board shall consider such reasonable requirements or conditions for the permit as will ensure the development will satisfy the requirements of this chapter. A vote may be taken on such conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth in 3 or 4.
 - c. The Board of Adjustment shall consider whether the application complies with all of the applicable Standards for Approval set forth in 180.06. Separate votes may be taken with respect to each criterion. If the Board of Adjustment concludes that the application fails to meet one or more of the criteria, the application shall be denied.
 - d. If the Board of Adjustment concludes that all such criteria have been met, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standards set forth in 178.06. Separate votes may be taken with respect to each standard. Any such motion regarding compliance or noncompliance of the application to the development criteria or Standards for Approval shall specify the supporting reasons for the motion. It shall be presumed the application complies with all criteria and standards not specifically found to be unsatisfied. Without limiting the foregoing, the Board of Adjustment may attach to a permit a condition it deems necessary to protect the health, safety, and general welfare of the public. All conditions or requirements shall be entered on the permit.

The Board of Adjustments shall not grant a conditional use permit for any home occupation/home-based business which is otherwise prohibited under this zoning code.

Comprehensive Plan Review

The Windsor Heights Comprehensive Plan has been reviewed by City Staff to make sure that this project aligns with the goals and ideals of the Comprehensive Plan. The proposed Residential, Multi-Family Apartment project meets several of the goals identified and outlined within the Comprehensive Plan and addresses the following goals as determined by the City Staff. The Comprehensive Plan supports the proposed project as it is presented.

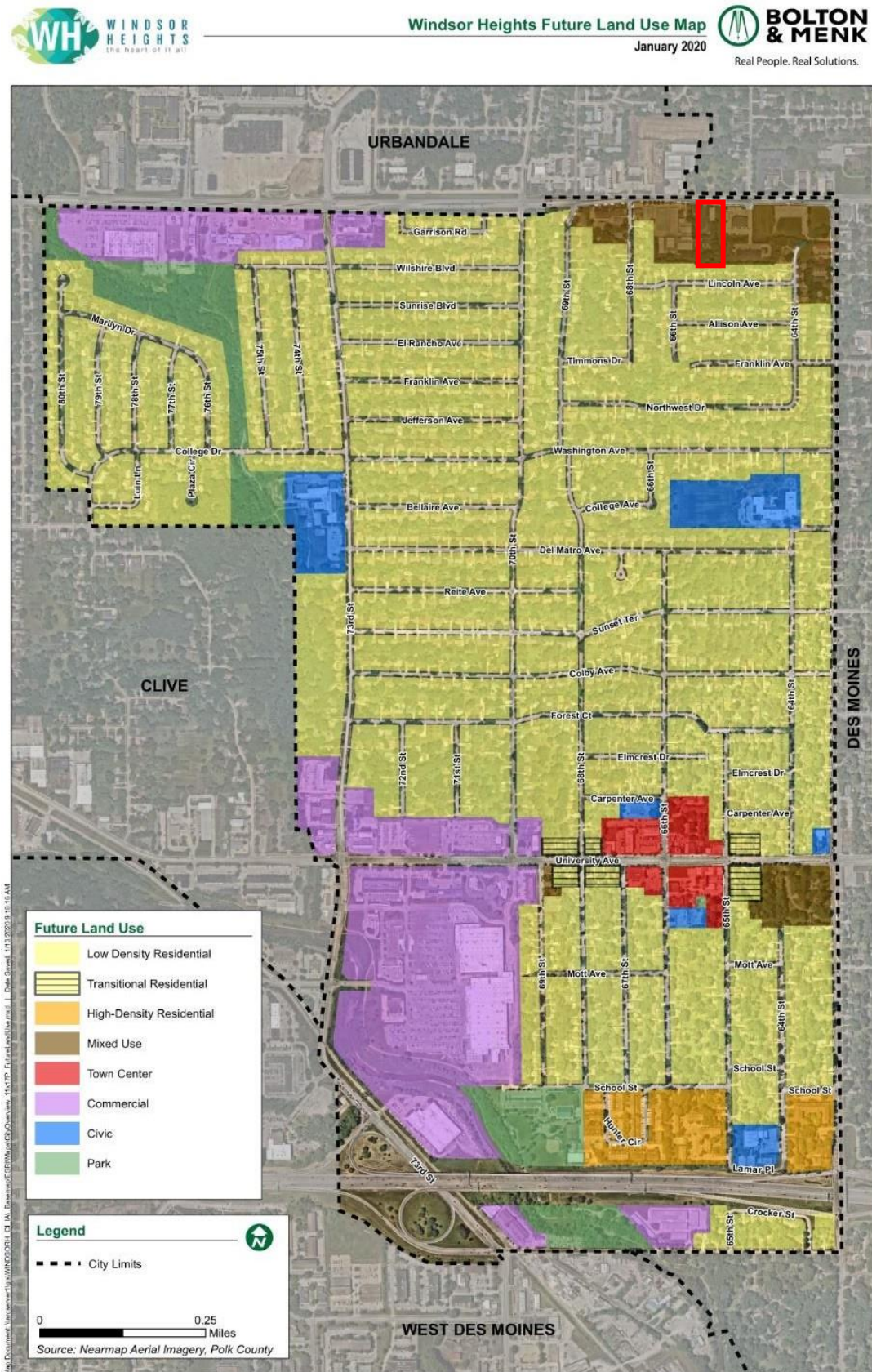
Neighborhood Character:

1. Broaden the mix of housing to appeal to a wide range of people at all stages of life.

Future Land Use Map

The future land use map should be used as guidance for areas throughout the City. The map identifies this location as Mixed Use, which is defined on page 40 of the 2017 Comprehensive Plan. “*Mixed Use*. This area encourages combinations of limited commercial, office, and residential uses.” This use aligns with the Future Land Use Map of the City of Windsor Heights.

Figure 1: Updated Future Land Use Map



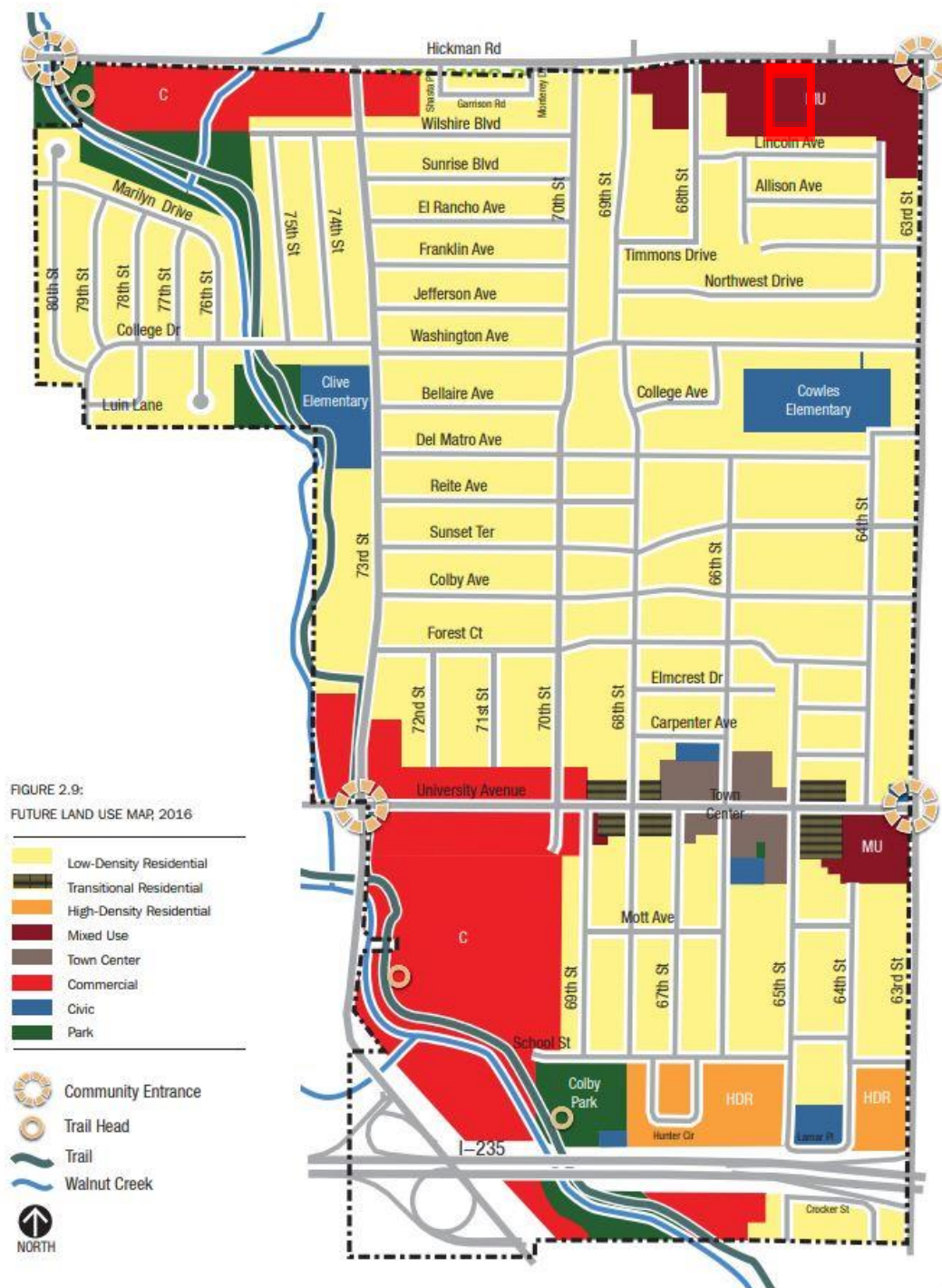


Figure 2: Windsor Heights' 2017 Comprehensive Plan's
Future Land Use Map

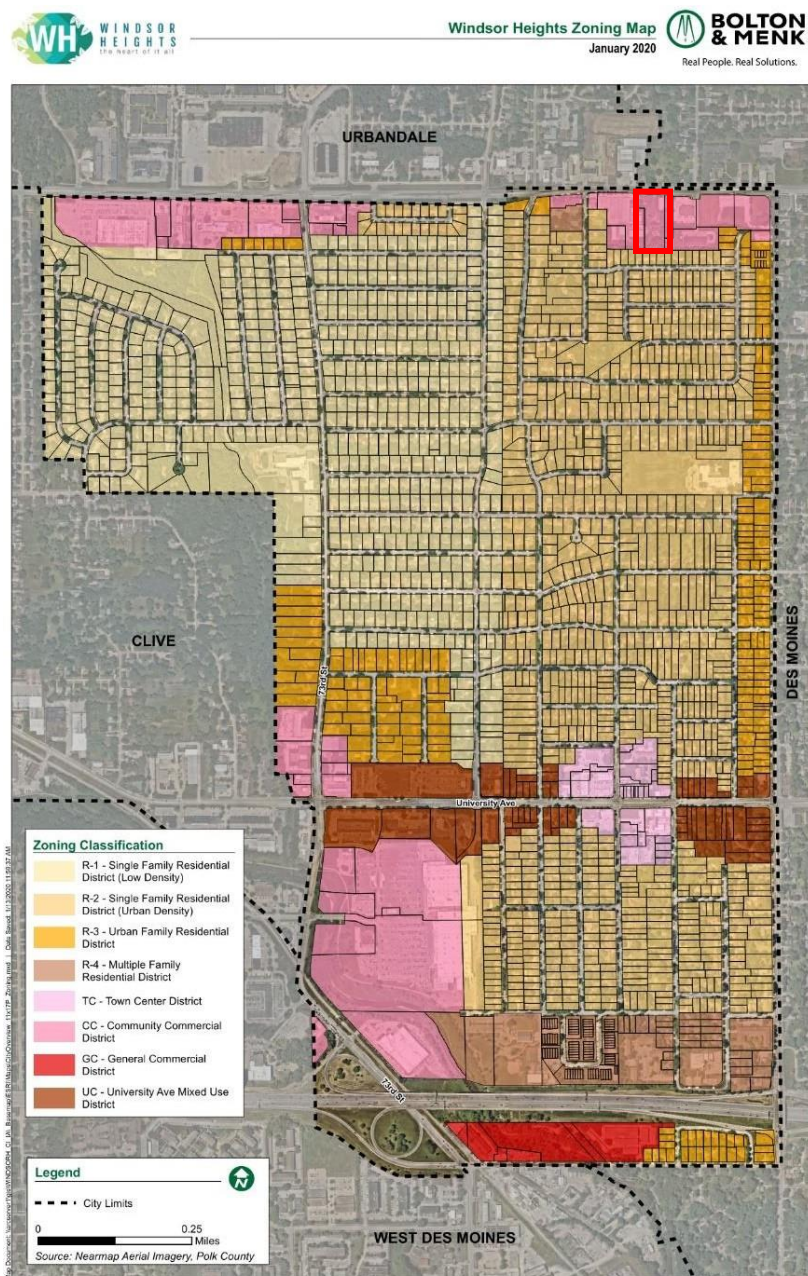
Public Comments Received

No public comment had been received at the time of the creation of this Staff Report.

Zoning Map

The parcel is currently zoned for Community Commercial District which is defined in [Table 168-1 Purposes of Zoning Districts](#) as “This district is intended for commercial facilities which serve the needs of markets ranging from several neighborhoods to the overall region. CC Districts are appropriate at major intersections, at the junction of several neighborhoods, or at substantial commercial sub-centers.”

Figure 3: Current Zoning Map



Recommendation

The staff recommends approval of the Conditional Use Permit for the property located at 6500 Hickman Road to allow for the use of Residential, Multi-Family as long as it adheres and abides by all conditions attached to the permit.

Recommended Motion

Move to approve the Conditional Use Permit for the property located at 6500 Hickman Road to allow for the conditional use within the Community Commercial Zoning District of Residential, Multi-Family with the conditions recommended by City Staff. The reasoning behind this is the request meets the conditions for approval as follows:

- a. Compatibility. The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious, or offensive in appearance to abutting or nearby properties.
 1. The proposed changes to the property will bring the buildings into compliance with the current City and Zoning Code. It will require updates to the façade and other factors of the property. It also doesn't change the footprint of any of the buildings and doesn't impact the surrounding properties to be able to continue to use their properties as they see fit.
- b. Transition. The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.
 2. The property does not require a buffer of any kind and creates transitional use within the Community Commercial District with the change in use.

- c. Traffic. The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.
 1. The development limits traffic congestion onto Hickman Road and provides pedestrian connectivity throughout the property. Emergency access is clear to the property as it has been in the past and creates no issue with the change of use.
- d. Parking and Loading. The development shall provide all off-street parking and loading areas as required by this ordinance, and adequate service entrances and areas. Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes, or other detrimental impacts.
 1. The parking requirements for the proposed use are met with the existing parking and the existing parking is buffered by the current buildings on the property. Detrimental impacts are limited and negated when it comes noise, headlights, and fumes nuisances.
- e. Signs and Lighting. Permitted signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.
 1. Through the recommended Site Plan review process the property will need to be in conformance with the signage code for any signage that is placed on the property and conform to the lighting standards of the zoning code as well.
- f. Environmental Protection. The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.
 1. The proposed use on the property meets the requirements of this condition of approval by safeguarding the resources on the property and not generating any excessive nuisance based upon the use.

Conditions of Approval

The following conditions are attached to the permit:

1. The Property at 6500 Hickman Road goes through the entire Site Plan Review and Approval process and is approved by the Planning and Zoning Commission and City Council. This includes:
 - a. All comments from City Staff and Departments are addressed in their entirety
 - b. All processes through the Site Plan Review process are followed
 - c. All Fees are paid for the Site Plan Review process
2. Be approved by the Zoning Board of Adjustments for a variance to reduce the minimum requirement by the Windsor Heights Zoning Code for the Interior Side Yard Setback to 2'.
3. All appropriate permits for development and construction are acquired prior to the beginning of development and construction on the site.

4. Approval of signs and utility from Safe Building.
5. Approval of streets and access from Iowa Department of Transportation.
6. Abide by all other conditions placed on this Conditional Use Permit as decided by the City of Windsor Heights Zoning Board of Adjustments.
7. Go through any of the appropriate processes determined to be necessary by City Staff of Windsor Heights included but not limited to the Site Plan Review Process.
 - a. This would include coming into conformance with Site Plan requirements pertaining to and not limited to the following:
 - Landscape Requirements
 - Signage Requirements
 - Stormwater Retention and Detention Requirements
 - Parkland Dedication
 - Lighting Requirements
 - Lot and Property Requirements
 - Setbacks
 - Impervious Surface
 - Building Coverage
8. All current nuisances identified on the property by City Staff must be dealt with and addressed before the Conditional Use Permit goes into effect.
 - a. Confirmation of the nuisance being addressed must be handled and overseen by City Staff.
 - The property identified as 6500 Hickman has previously been through the nuisance abatement process, most recently in 2018, and shows a relatively high police call volume at the site. An attachment of this information is included with the Staff Report.
9. If the Zoning Enforcement Officer determines at any time that the property becomes a nuisance or exhibits a pattern of violating the terms of the conditional use permit, the Zoning Enforcement Officer may apply to the Board to consider revocation of the Conditional Use Permit.
10. Provide the City Building Inspector full access to the property for preemptive inspection and rental inspections.
 - a. Obtain a rental permit from the City of Windsor Heights.

Attachments

1. Application Materials (as submitted)
2. Preliminary Site Plan – Draft
3. Nuisance Letter for 6500 Hickman Road

STAFF REPORT

Date: April 17th, 2024
To: Windsor Heights Board of Adjustment
From: Justin Ernst, PE
Trey Rouse
Subject: Interior Side Yard Setback Variance Staff Report (6500
Hickman Road)

General Information

Applicant: Mila Schwarz
POB 65653
West Des Moines, IA 50265
Property Owner: Windsor Court Apartments LLC
(Mila & Tony Schwarz)
Proposed Use: Residential, Multi-Family
Zoning: CC District (Community Commercial)
Location: 6500 Hickman Road

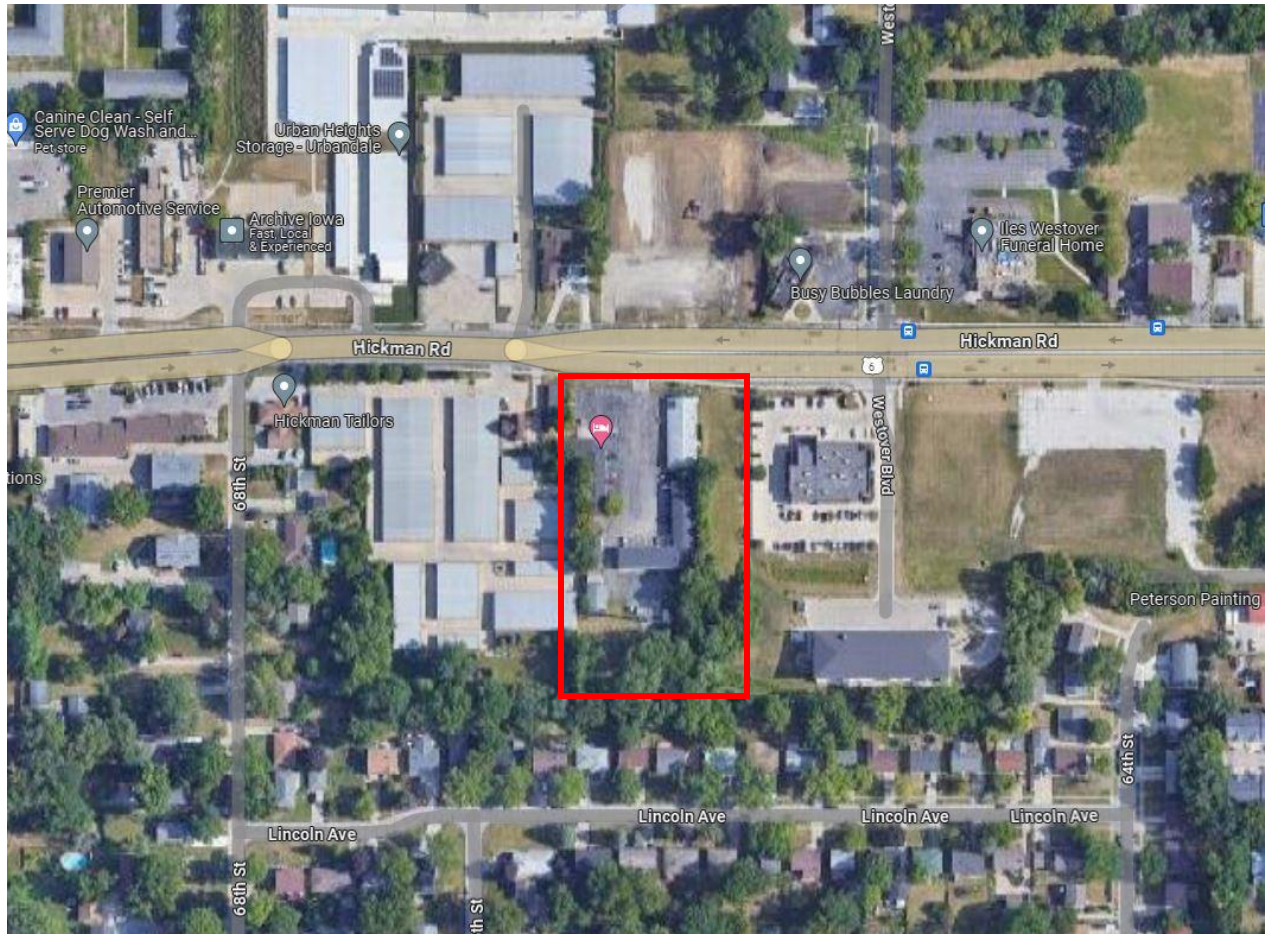
Summary

The applicant, Mila Schwarz, is requesting a variance in the CC District (Community Commercial District) for the property listed at 6500 Hickman Road to lower the minimum requirement for the interior side yard setback, required within the CC District, from 10 feet to 2 feet. The CC District (Community Commercial District) currently requires that the minimum setback for all buildings on the property be setback from interior side yard by 10 feet. The Zoning Board of Adjustments, at their discretion, may lower this requirement if it unduly creates a hardship for the property.

Existing Conditions

The 4.75-acre lot is in the CC – Community Commercial Zoning District. The lot currently has six (6) complete structures that make up 13,539 sq. ft. of Hotel/Motel rooms and office space on the property, defining its primary use. There is available off-street parking located throughout the center of the property and open space can be found on the south and east sides of the property. This property has one full-access driveway onto the property from Hickman Road. All existing structures are proposed to remain with their current footprint.

Property Location and Surrounding Properties



Legal Description of Property

EX N 2.5F LTS 7 & 7 1/2 & N 15.5F LT 8- & -EX

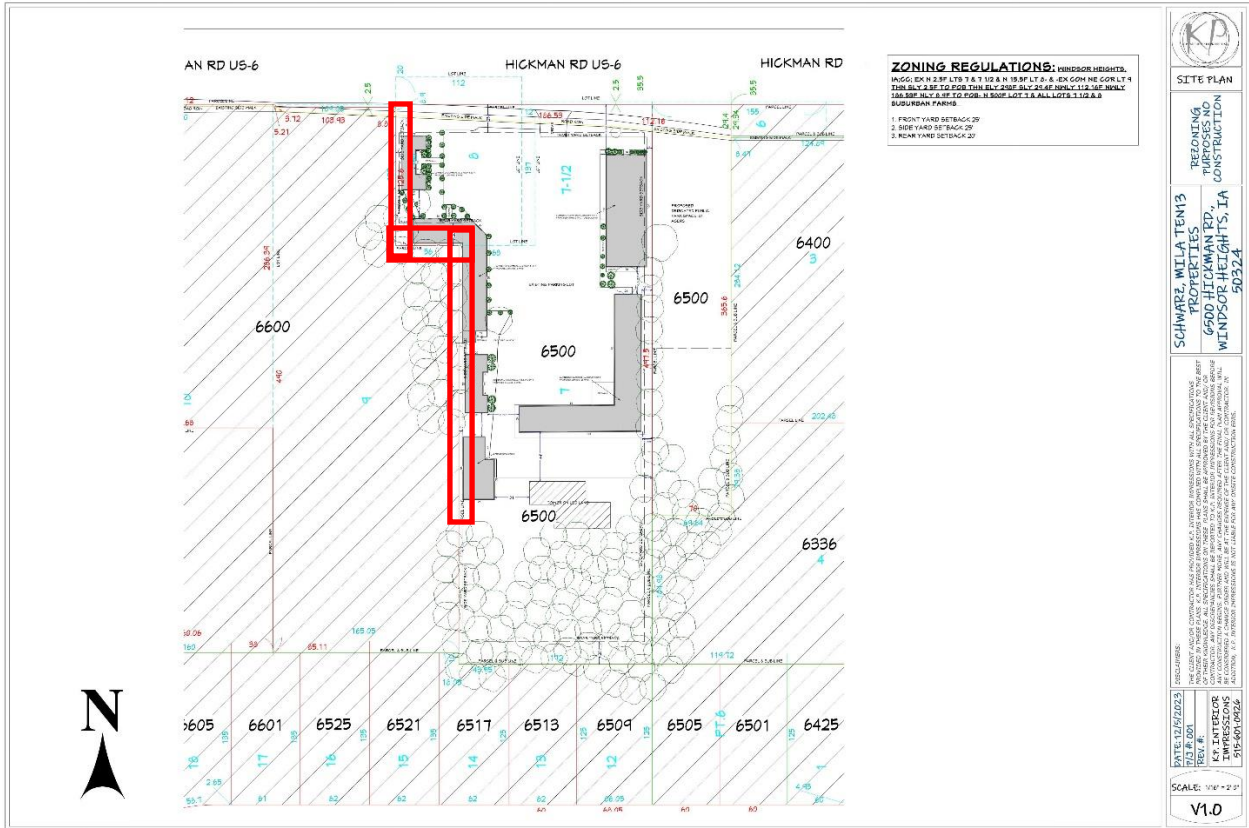
COM NE COR LT 9 THN SLY 2.5F TO POB THN ELY 298F

Sly 29.4F NWLY 112.16F NWLY 186.53F NLY 8.9F TO

POB- N 500F LOT 7 & ALL LOTS 7 1/2 & 8 SUBURBAN

FARMS

Preliminary Site Plan for Development



Background

September 9th, 2023: Discussion with City Staff Submittal of Request for Variance

February 29th, 2024: Confirmation of Variance Materials

Applicable Code Sections

166.03 Definitions of Terms

189 (e). “Residential, Multi-Family” means a residential use with more than three units on a single lot in which all units do not contain at least one common wall with another unit. Units do not have to contain a common wall and may be above or below each other. Also known as Residential, Multiple-Family.

Chapter 185.09 Appointment and Duties of Board of Adjustment

1. Appointment and Duties of Board of Adjustment. A Board of Adjustment is hereby established which shall hear and decide (i) appeals and (ii) requests for variances to the provisions of this ordinance and shall take any other action which is required of the board.
2. Appeals. Where it is alleged, there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

3. Variance. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.
 - A. Variances shall only be granted upon: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.
 - B. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
 - C. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - D. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this ordinance, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.
 - E. All variances granted shall have the concurrence or approval of the Department of Natural Resources.
4. Hearings and Decisions of the Board of Adjustment.
 - A. Hearings. Upon the filing with the Board of Adjustment of an Appeal or a request for a variance, the board shall hold a public hearing. The board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.
 - B. Decisions. The board shall arrive at a decision on an appeal or variance within a reasonable time. In passing upon an appeal, the board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a variance, the board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as contained in 185.09(4)(B)(2).
 - (1) Factors upon which the decision of the Board of Adjustment shall be based. In passing upon applications for variances, the board shall consider all relevant factors specified in other sections of this ordinance and:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.

- b. The danger that materials may be swept on to other land or downstream to the injury of others.
- c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- e. The importance of the services provided by the proposed facility to the City.
- f. The requirements of the facility for a floodplain location.
- g. The availability of alternative locations not subject to flooding for the proposed use.
- h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
- l. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
- m. Such other factors which are relevant to the purpose of this ordinance.

(2) Conditions Attached to Variances. Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this ordinance. Such conditions may include, but not necessarily be limited to:

- a. Modification of waste disposal and water supply facilities.
 - b. Limitation of periods of use and operation.
 - c. Imposition of operational controls, sureties, and deed restrictions.
 - d. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this ordinance.
 - e. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.
5. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

Recommendation

The staff recommends approval of the variance for the property located at 6500 Hickman Road to lower the minimum Interior Side Yard Setback from 10' to 2' as long as the proposed project adheres and abides by all conditions attached to the Conditional Use Permit, Site Plan Approval Process (if determined to be necessary) and meets all other requirements of the site and Zoning District.

Attachments

1. Conditional Use Permit Application Materials (as submitted)
2. Preliminary Site Plan - Draft