



**CITY OF LA VISTA
8116 PARK VIEW BOULEVARD
LA VISTA, NE 68128
P: (402) 331-4343**

**BOARD OF ADJUSTMENT AGENDA
SEPTEMBER 2, 2020 – 6:00 P.M.**

1. *Call to Order*
2. *Approval of Meeting Minutes – July 10, 2017*
3. *Old Business*
4. *New Business*
 - A. *Election of Officers (Chairperson, Vice-Chairperson, Secretary)*
 - B. *Variance Request Filed by Dorwill, LLC*
 - i. *Staff Report – Chris Solberg*
 - ii. *Public Hearing*
 - iii. *Decision*
5. *Comments from the Floor*
6. *Comments from the Board of Adjustment*
7. *Comments from Staff*
8. *Adjournment*

The public is welcome and encouraged to attend all meetings. If special accommodations are required please contact City Hall prior to the meeting at (402) 331-4343. A copy of the Open Meeting Act is posted in the Council Chamber. Citizens may address the Board of Adjustment about the agenda item during the public hearing. We ask for your cooperation in order to provide for an organized meeting.



**CITY OF LA VISTA
BOARD OF ADJUSTMENT
JULY 10, 2017
7:00 P.M.**

The City of La Vista Board of Adjustment held a meeting on Monday, July 10th, in the Harold "Andy" Anderson Council Chamber at La Vista City Hall, 8116 Park View Boulevard. Chairman Karnik called the meeting to order at 7:00 p.m. with the following members present: Karnik, Malmquist, Carlisle and Strittmatter. Absent: None. Also in attendance were Chris Solberg; City Planner, and Meghan Engberg; Permit Technician.

Legal notice of the public meeting and hearing were posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Board of Adjustment and to those persons who had appeals pending before the Board. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

1. Call to Order and Roll Call

The meeting was called to order by Karnik at 7:00 p.m. and roll call was taken. Copies of the agenda and staff reports were made available to the public.

2. Approval of Meeting Minutes – September 7, 2016

Malmquist moved, seconded by Strittmatter to approve the September 7th minutes. **Ayes:** Karnik, Malmquist, and Strittmatter. **Nays:** None. **Abstain:** Carlisle. **Motion Carried.** (3-0)

3. Old Business

None.

4. New Business

A. Election of Officers (Chairperson, Vice-Chairperson, Secretary): Karnik stated that they had a couple of options, right now Karnik is Chair; Strittmatter is Vice-Chair; and Malmquist is Secretary and that they could have a discussion to change this, or if they were all okay, they could also have a motion to keep the same positions as well.

Strittmatter moved, seconded by Carlisle to keep current positions the same. **Ayes:** Karnik, Strittmatter, Carlisle, and Malmquist. **Nays:** None. **Motion Carried.** (4-0)

B. Variance request filed by Primus Dental

- i. **Staff Report:** Solberg stated that the applicant, Primus Dental, is requesting a variance for Lot Gary and Debbie Pink No. 3. The specific request is to reduce the front yard setback, along west property line from 25 to 15 feet, to allow for the construction of a dental office building.
- ii. **Public Hearing:** Karnik opened the public hearing.

Thad Harker came up and spoke on behalf of the applicant. He mentioned that when he first started his job at Primus Dental, that his boss told him to watch Mad Men. He said that what he learned from that is that a picture is worth a thousand words and that he really thought that whole thing through when it came to this variance request. He said that on his way over here, he realized it isn't about a picture; it isn't about a variance request, or an encumbrance or challenging building site. What it's really about is that he just doesn't represent himself or the doctors, he really represents communities and tonight he is representing our community.

Harker stated that there a lot of good people who are dentists, but there's not a lot of highly skilled, nationally travelled, nationally honored dentists, and that's who we have with us tonight. He said that that's awesome for our community because if we have them, that means that another community doesn't have them. So, it's less about the site than he thought and more about the fact of what it would mean for any city, including this city of La Vista, to have highly skilled periodontists, implants, and orthodontists.

Harker then presented a picture of the site plan. He then mentioned that when they do an evaluation of an area or a site that they go by general rules of thumb. Their expectation would be for them to build a 7,500 or 8,000 square foot office per acre of land. He said that this site is actually 54,000 square feet, so they are actually 11,000 square feet higher than what they need, so they should be able to build a 9,920 square foot building without encroaching on the setback and also be able to fulfill the parking requirements if it was a typical lot.

He said that because of the compromised layout, the buildable area here is less than 10,000 square feet and that's really the depth of their difficulties because clients come to them because they efficiently build their dental space. Their architects aren't building for their own book so they can go out and feel good about it, they take what their clients want and they customize it, so they like to feel that they are very responsible users of the space they are given. However, with this particular instance, in order to give their clients the building they want to accomplish the things they need, it made it very hard with less than 10,000 square feet of buildable space.

What they are trying to do is to build a multispecialty practice with periodontist, implants and orthodontist. They will also have an imaging center and potentially an area where they can have study clubs and actually educate the other dentists that are in the community that

aren't specialists. He feels that everything they are doing is going to attract positives to the entire city and especially that specific area. Harker then showed another slide to depict another encumbrance or compromise, the fact that there is a retaining wall and then going down that line into the drainage easement is obviously not a topography that is suitable to build anything on, so that encroaches on the edge of the proposed building on that side. He then said that as you look down towards the railroad tracks and the creek, you have the utility easement that cuts right across deeply into buildable area and then goes all the way across the lot, so in order to fit parking you have to put it on the side that does not have the retaining wall. He said that the only way to fit the building and parking lot is to take the front setback and build it back as far as you can until the easement cuts it back on one side and the topography on the other side.

Harker stated that their choice would be to go up, but then they would be required to put in an ADA elevator, which is not something typically seen in a dental office. He then passed out a picture showing them the efficiency of the space. He said that they are not busting at the seams, but will need every last bit of space.

Harker then mentioned a letter that was sent by the intern saying that one of the adjoining businesses had some fairly strong feelings as to why they shouldn't offer a variance. He said that the logic was fairly sound, but if the lot was correct, they would have a lot more surface area to stir. They would be able to build that 10,000 square foot building. The fact that they are encroaching that 10 feet, approximately 700 square feet of building space, they are still well under the capacity of the size of building that this ground would take. They are not actually going to increase runoff at all because they're over developing the land and are not encroaching on anyone else's land.

Karnik asked if this was the only site they looked at as far as feasibility, or if there were other sites that were evaluated.

Harker said that he was brought in after the process. He said that they had actually looked at another site.

Dr. Miyamoto then came up to speak. He thanked the board for taking their time to meet with them on this project. He said that he currently practices in La Vista, in Southport, in a 1,200 square foot space. He said that he thinks it's important to know that he is the only periodontist in La Vista and that Dr. Kim is the only orthodontist in this town. He said that he sees about 200 patients a month, mainly from La Vista or that neighborhood and they don't want to leave this town or Southport.

The space they are in is too small, so they decided that they are going to grow out and make it a little bit larger space. Dr. Miyamoto said that they looked at every available lot in Southport and it was either too big or too narrow. After looking at every available lot, this was the only lot, in terms of size, that would meet their needs.

Dr. Miyamoto said that their goal was to have a multispecialty practice with both orthodontist and periodontist. They also have the largest study club in Omaha, so they attract many dentists to the area. They have 20-30 dentists come to the study club every month and right now they are using restaurants and hotel rooms, so they wanted to build

this building with a study room so these dentists can come and experience Southport development. He said that they also have study club on an international level, that Japanese dentists come to their practice once a year to study implants and orthodontics through their office. He said that they have been practicing in La Vista for about 6 years, so they are excited about this site. It's the only lot that they found that will fit the size for what they want to do. Dr. Miyamoto said that they could find a similar site if they went to Douglas County, but they don't want to leave Southport, so that's the reason why they are trying to invest the building here.

Harker said that when they do a site search, that there just aren't many out there, but you come down to one that works. He said that unfortunately because everything is custom build, the doctors have an idea of what they want, but until they put it on paper, they don't look at a site and say they have to have this. You make the decision on the site and then you go and design the building.

Malmquist asked why the retaining wall was there and who it belonged to.

Solberg said that there is a drainage area that flows through this area and actually through the tracks area and further east, so it comes from a storm sewer line in that retaining wall and you've got the drainage on the east end of the retaining wall that kind of dips down. It's a rather sizable area that drains a good chunk of Southport West.

Harker said that it's a very large culvert and he's assuming that there are some detention systems all throughout that development and they were probably all put together as the development was built. He said that it was well designed, but definitely one of the biggest ones that he's had to deal with.

Karnik closed the Public Hearing.

Strittmatter brought up the origins of the lot. He mentioned that Solberg shared with him that when West Giles Rd. was rebuilt this property was bisected with the road creating extra right-of-way and these lots were kind of left on that side. He then said that Solberg had dug up an aerial that indicated the OPPD line was probably in the same general configuration going west to east or east to west because of the Old Giles Rd. It may have been relocated or it may not have. He said that his next question would have been why there was an easement through that lot which basically makes it difficult to do anything with. He then asked Solberg if he thought Gary and Debbie Pink owned that land during the West Giles Road construction and then TNT bought it from them.

Solberg said that the basis was that Sarpy County owned that swath of land including Giles Road and Gary and Debbie Pink, the replat area just south of it. After they got done reconstructing Giles Road, there was excess right-of-way there that Sarpy County decided to dispose of and through that disposal process, somebody came along and bought up that stretch of land between Giles Road and the railroad tracks. It was eventually replatted through the platting process to Gary and Debbie Pink and now it's actually on its third replat process.

Strittmatter said that the reason he asked was to see how these lots were configured because they wouldn't have met reasonable standards for buildability, but the other trick is if the buyer planned on buying the lot with the intention of going after variances, then whose fault is that. He then asked that given that this is the first lot that there that would be constructed on in that general vicinity that has these same or similar challenges, would they grant variances to others.

Solberg said that there is only one other lot in that stretch that has that restriction. He said that there are still a number of different things that could go into that lot.

Strittmatter asked that rather than going through a variance process, if they would ever require for the owners to get a PUD that would address the setback issues. He said that he felt that this could be addressed through a planning commission process.

Solberg said that he believed that it was briefly discussed for doing a PUD for this area way back when the initial replat went through, however, with this lot specifically, the minimum lot size for a PUD is 3 acres. It would not meet that requirement. He then said that development wide, a PUD would have made a little more sense. He said that looking back on it, it might have been a little more appropriate with these 2 specific lots to approach the setbacks.

Karnik asked about the letter from Marty Giff and asked Solberg to give his opinion on it.

Solberg said they received the letter last minute, coming in the day the packet was being prepared, so he did not have time to include comments from the City Engineer [regarding the stormwater concerns raised in the letter]. He was able to talk to him about it and his response in relation to that aspect was that Gary and Debbie Pink No. 3 is required to agree to providing storm water detention to result in no peak flowing increases from all storm events up to 100 year events, which exceeds the city's normal criteria of 2 year known increase and 10 year increase to not more than 25% of the predevelopment. He said that's part of the reason why the City Engineer requested the applicant to indicate a conceptual plan for storm water management, so they realized that it is a limitation that they would need to address and that there is even a letter stating that they understand that there is storm water aspects that need to be addressed at time of construction.

Karnik then asked as far as the City is concerned, if there is any concern in general on the development on this stretch of property.

Solberg said that they do not have any specific concerns for development on this site. There are the limitations of access that they're controlling and pushing everything down to S. 125th Street connection in there because you can't allow access onto West Giles Road that close to the intersection. He said that their site plan doesn't show any connection or attempt to connect to West Giles Road. He said that the aerial is out of date and that there is actually a road that is paved up to their site. The only other constraint in this area is the Gateway Corridor Design Guidelines, so any development in this area is required to meet the Gateway Corridor Design Guidelines for landscaping and building.

Carlisle asked if that has all been provided to the applicant and if they are familiar with what they need to do with all of that.

Karnik said that they had.

Strittmatter asked if there was any other public safety issue by adjusting the setback that they should be aware of and maybe a broader understanding of why the 25' instead of the 15'.

Solberg said that zoning setbacks have morphed over time, especially in the suburban style development as most of La Vista is set up to be. Setbacks were originally intended to provide some space between lots for a little more safety between the different buildings. There's light shed between the buildings and one of the main reasons that zoning came about was the old fire of Chicago because a lot of the buildings were so close together that they caught fire on to each other. He said that some of the regulations are dated because of building codes now having fire sprinklers as well as fire apparatuses and how we attack fires. He said that the biggest thing to remember looking at setbacks this close to a road is site lines. He doesn't feel that where this is located that there are any site issues.

Karnik asked if this site is on a dead end road.

Solberg said yes.

Recommendation: Malmquist moved, seconded by Carlisle to grant the variance as requested, finding that upon the strict application of the applicable provision, because of the irregular shape of the lot and due to the relationship of the railroad and right of way there and the utility easement that it does result in a hardship. Number 2, peculiar and exceptional practical difficulties to or undue hardship, there are topographic conditions on the piece of property in question and due to that, there is a resulting hardship. Number 3, peculiar and exceptional difficulties, included due to other extraordinary and exceptional of the property in question and that relates to the 17-foot utility which does limit the buildable area and lot effectively splits the lot into 2 areas and can be used for constructing the building, that results in a hardship. Such variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City regulation. They have discussed the pros and cons of those issues in the minutes and they would find that that specific requirement is satisfied. Number 2 in Part B, due to the location of the utility easement on this property, the location of the drainage easement, the slope and the setback results in the front yard setback requirements limits the constructability area and the request is for a 10 foot variance in front of the building and it is found that that application is satisfied. Such hardship is not generally shared by other properties in the zoned district. They have met the hardship standard there. Number 4, the hardship will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance. Number 5, the variance is related to the applicant's request. They have demonstrated an exceptional hardship stemming from the characteristics of the property and not for reasons of convenience, profit or desire of the property owner. Number 6, the condition or intended use of such property is not of so general or recurring in nature. An amendment to the zoning ordinance would not be

appropriate because it is not generally a recurring issue. **Ayes:** Karnik, Strittmatter, Carlisle, and Malmquist. **Nays:** None. **Motion Carried.** (4-0)

5. Adjournment

Chairman Karnik adjourned the meeting at 7:50 p.m.

Reviewed by Board of Appeals:

Secretary

Chairman

Approval Date



CITY OF LA VISTA
BOARD OF ADJUSTMENT

STAFF REPORT

VARIANCE REQUEST

DATE OF BOA MEETING:

September 2, 2020

SUBJECT:

Variance to Section 5.13.05 Height and Lot Requirements of the
La Vista Zoning Ordinance

PROPERTY INFORMATION

APPLICANT:

Dorwill, LLC
8231 S 107th Street
La Vista, NE 68128

PROPERTY OWNER:

Richard Essi
8231 S 107th Street
La Vista, NE 68128

SUBJECT PROPERTY:

Lot 1, I-80 Business Park 2nd Addition
La Vista, Nebraska

ZONING:

I-1, Light Industrial District with a Gateway Corridor Overlay District

BACKGROUND

Description of Request:

1. Dorwill is an industrial business seeking to construct a 3,183 square foot contractor's office on Lot 1, I-80 Business Park 2nd Addition.
2. Applicant has acquired two additional pieces of excess right-of-way from the Nebraska Department of Transportation. If a variance is granted, applicant will be required to plat the three pieces of property into one parcel in order to develop the property.
3. The request is to:
 1. Allow a reduction in proposed front yard setback along South 108th Street from 35 feet to 30 feet.
 2. Remove the 60-foot setback requirement for front yards with parking in the front for this property.
 3. Allow a reduction in proposed side yard setback along the west side lot line from 30 feet to 15 feet.
4. According to the applicant, the hardship is stated as, "Even with the lots combined, the small lot size and a utility easement that runs through the lot result in my inability to meet some of the building setback requirements."
5. The property lies along the eastern side of Interstate 80. It is an irregularly configured lot due to the location of the interstate, Harry Anderson Ave, and S 118th Street right-of-ways. A utility easement cuts across the southern one-third of the property until it turns north toward the Interstate 80 right-of-way. The Papillion Creek floodplain extends into the southwestern corner of the property and up the western edge.

Applicable Zoning Regulations:

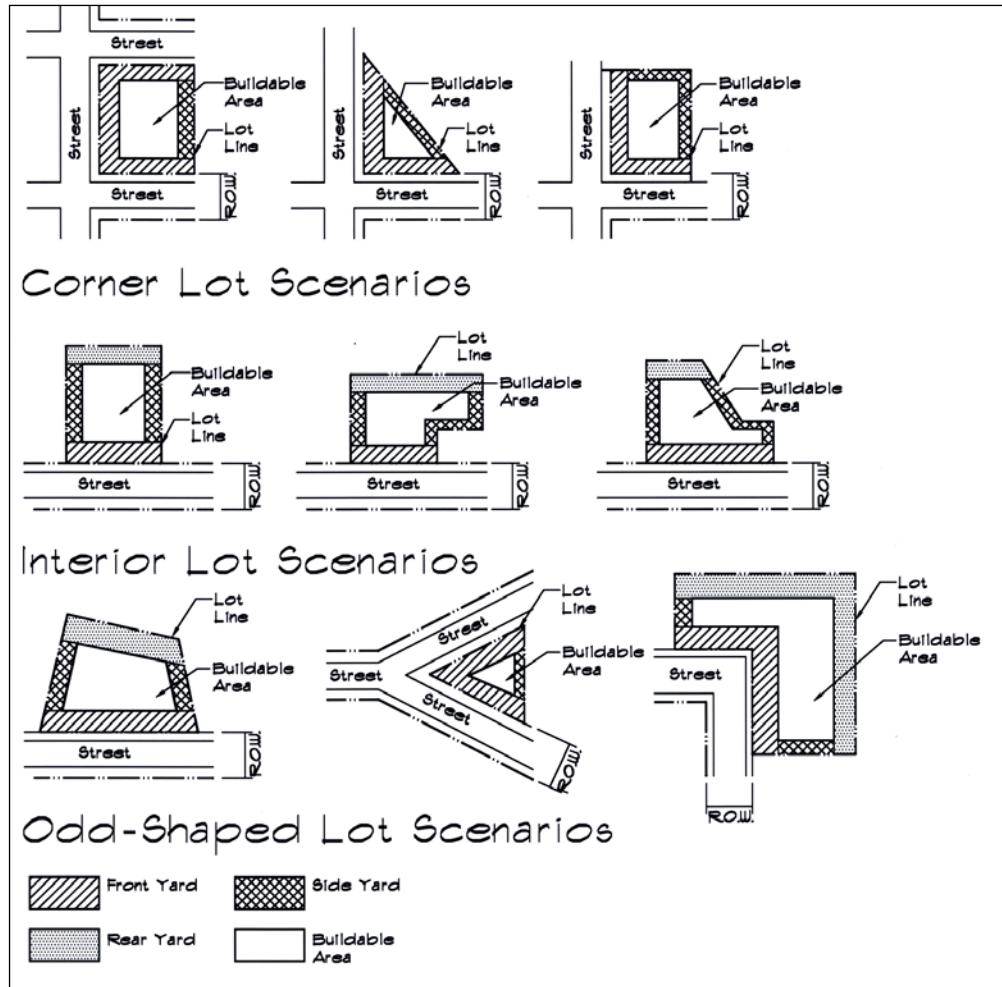
5.13.05 Height and Lot Requirements:

5.13.05.01 The height and minimum lot requirements shall be as follows:

Use	Lot Area (SF) ₂	Lot Width ₂	Front Yard	Side Yard	Rear Yard	Max. Height	Max. Lot Coverage
Permitted Uses	10,000	100	35'	30'	25'	45'	65%
Permitted Conditional Uses	10,000	100	35'	30'	25'	45'	65%
Accessory Buildings	-	-	70'	10'	10'	25'	20%

1. 35' front yard setback required only when no parking is present in the front yard. If parking is located in the front yard then front yard setback is a minimum of sixty (60) feet.
2. *Lots created before January 1, 2008 may have a minimum Lot Area of 10,000 square feet and may have less than the minimum 100 feet lot width. (Ordinance No. 1053, 1-15-08)*

ARTICLE 2: DEFINITIONS



Example of possible Lot Configurations and Yard Requirement

CONDITIONS FOR VARIANCES

Section 8.03.03.01 and Nebraska Revised State Statutes Section 19-910:

The Board of Adjustment shall authorize no such variance, unless it finds that:

1. The strict application of the Ordinance would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

Bylaws and Rules of Procedure of the City Of La Vista Board of Adjustment – Section 7, Specific Requirements in Approval of a Variance:

In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board that:

- A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:

1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in questions;

Staff Analysis: The lot is of irregular shape and narrowness to due to the location of the Interstate 80, Harry Anderson Ave, and S 118th St right of ways as compared to other I-1 Industrial lots. Due to the shape of the property, parking in front of a building on the lot pushes the setback along Harry Anderson Ave and S 118th Street to 60 feet. Additionally, a floodplain along the third side of this lot further limits the building envelope, creating an irregular and narrow buildable area. Further constricting the buildable area is a utility easement that cuts across the southern third of the property.

Resulting Hardship: Yes / No

2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;

Staff Analysis: The lot gradually slopes downward from east to west before shifting upward at a steep slope up to the interstate in the adjoining right-of-way. Prior to this upward shift the topography dips to an elevation of 1042, which is approximately where the floodplain area encroaches upon the property. Although this topography is roughly similar to other industrial lots in the general vicinity, these lots are not impacted by the floodplain as a result of the topographical changes.

Resulting Hardship: Yes / No

3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.

Staff Analysis: The irregular size and shape of the property limit the size of the building envelope available to this property. Additionally, the fact that the property fronts topographically accessible streets on two of its three sides further constricts the building envelope reducing the buildable area as the Zoning Ordinance requires these areas to be considered Front Yards, with greater setbacks than other yard designations. Further reducing the possible envelope is the relative inability to develop a site plan without having a portion of the building encroach into one of these designated Front Yards. Finally, an existing utility easement cuts across the southern third of the property, before turning north near the western edge. With parking in a

Front Yard, the setbacks along Harry Anderson Ave and S 118th Street increase to 60 feet, as well as the utility easement, the site constraints make the potential building envelope extraordinarily small.

Resulting Hardship: Yes / No

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:

- 1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;**

Staff Analysis: Staff does not believe such variance would be a substantial detriment to the public good and would not substantially impair the intent and purpose of the applicable City Zoning regulations.

Specific requirement: satisfied / not satisfied

- 2. The strict application of the requirements of the City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;**

Staff Analysis: Due to the size and configuration of the lot, limitations due to floodplain and utility easement constraints, and the front yard setback requirements, the buildable area of the lot is extremely limited.

Specific requirement: satisfied / not satisfied

- 3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;**

Staff Analysis: Other I-1 uses in La Vista do not have similar irregular lot shape and size issues significantly restricting the buildable area of their lots.

Specific requirement: satisfied / not satisfied

- 4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;**

Staff Analysis: Staff does not believe substantial detriment would occur on adjacent properties or within the zoning district.

Specific requirement: satisfied / not satisfied

5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;

Staff Analysis: The variance request is related to the applicant's desire to construct an industrial building of sufficient size for a contractor's office within a limited footprint.

Specific requirement: satisfied / not satisfied

6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.

Staff Analysis: Staff does not believe an amendment to the zoning regulations for an irregularly shaped and undersized property is appropriate as this property is not similar to others in the city.

Specific requirement: satisfied / not satisfied

DECISION

Move to approve the variance request, as proposed and presented to the City of La Vista Board of Adjustment, finding that at least one hardship has been created by the strict application of the Zoning Ordinance and finding that each specific requirement has been satisfied.

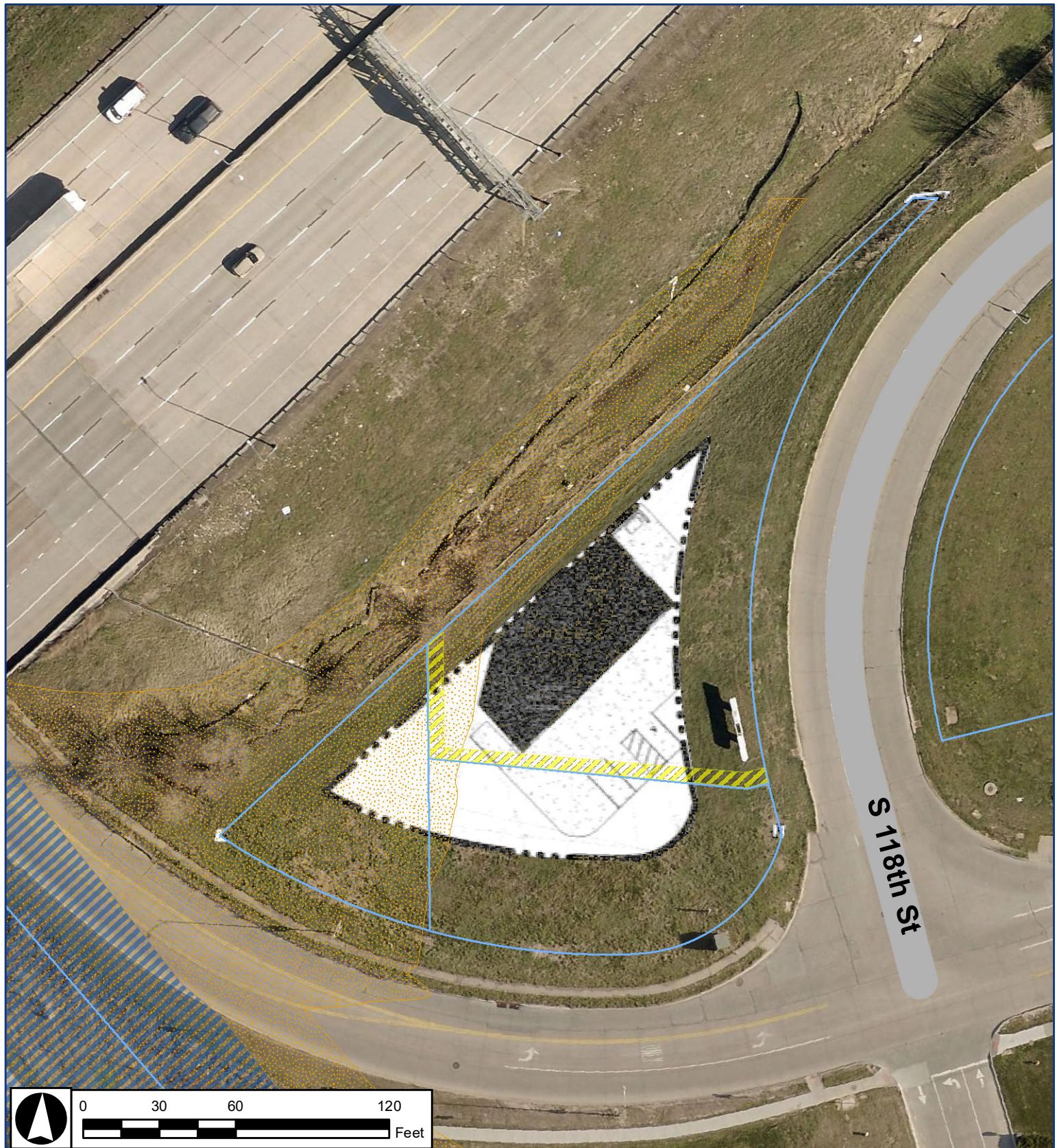
Seconded: _____

Vote: Ayes _____ Nays _____

If motion to approve fails:

Move to deny the variance request, as proposed and presented to the City of La Vista Board of Adjustment based on the following reasons for denial:

Vote: Ayes _____ Nays _____



Variance Request Detail Map

Dorwill Variance Request - 2020-BOA-01

Legend

- FLOODWAY
- A - 100-Year Flood Zone
- AE - 100-Year Flood Zone, Detailed Study
- 500-Year Flood Zone

- Utility Easement
- Tax Parcels

8/24/2020
CAS