

COUNCIL ACTION FORM

SUBJECT: WAIVER OF SUBDIVISION REGULATIONS AT 2501-2503 TIMBERLAND ROAD

BACKGROUND:

This single-family residential property owner in southwest Ames recently connected to City sewer services (see attached location map). The house did not previously have sewer service connected because it was outside of the city limits at the time it was built. The owner desired connection to City sewer and was subsequently connected in the fall of 2008. One of the requirements of the City was to either obtain ownership or to acquire an easement over the land on the neighboring property over which the new sewer service line was constructed. The property owner chose to pursue ownership of the area, which consists of a small triangle of less than 1/10 of an acre at the rear of the lot.

The subdivision regulations in Section 23.403(14)(a) require that sidewalks be installed on both sides of the street in residentially zoned areas. The zoning of the subject property is "RL," residential low-density. The owner submitted a sidewalk waiver request to City Council on December 12, 2008, which was later referred to City staff. Upon further consideration by City staff, it was discovered that there are several other non-compliant subdivision design standards due to the pre-existing nature of the neighborhood. The subdivision standards found to be deficient are typical frontage requirements that are required in new subdivisions, such as 26' wide pavement with curb and gutter, a turn-around in the right-of-way, and the 4' wide sidewalk on both sides of the street. The existing water main is already in place, and the sanitary sewer is served from the rear. **The request for waiver involves the construction of approximately 100 feet of a 4-foot wide sidewalk along the frontage of two lots, accessed by the unnamed right-of-way extending west from Timberland Road. City staff is suggesting that the City Council consider a waiver of the additional frontage requirements in the subdivision code as well as the sidewalk waiver request.**

This unnamed right-of-way that serves as the primary access for two existing homes is only 20' wide. The actual road surface is only 12 feet. There are no other sidewalks anywhere on Timberland Road, nor are there any on Oakwood Road. The area where the sidewalk would have to be installed is currently being used for surface drainage. Although there are two existing homes being served by this frontage, there is only one more vacant lot where a home could be built.

The City Council is being asked to consider a waiver of all frontage requirements for the two subject lots, Lots 17 and 20 of Timberland Heights Subdivision, for the purpose of effectively adjusting the lot line to encompass the sewer service for 2503 Timberland Road. This adjustment creates no additional lots and should therefore result in no additional impacts on the City's street or sidewalk system.

Municipal Code Provisions:

City code includes two provisions for potentially relaxing subdivision standards, including waiving/modifying or deferral of improvements. The criteria for waiving/modifying or deferring improvements are distinctly different in the following ways:

1. Waiver/Modification:

A waiver or modification of the regulations in Section 23.103 (1) requires the Council to find that one of the two following criteria is met:

- a. Strict compliance with the requirements of the Regulations would result in extraordinary hardship to the applicant or:
- b. It would prove inconsistent with the purpose of the Regulations because of unusual topography or other conditions

According to the Municipal Code, if the City Council waives or modifies any one of the subdivision regulations, it must find that “substantial justice [has been] done and the public interest [will be] secured,” and that “such modification or waiver shall not have the effect of nullifying the intent and purpose of the regulations.”

If the City Council determines that one, or both, of the two criteria listed above have been met, then the regulation(s) can be completely waived or modified by the establishment of certain conditions.

2. Deferment:

The deferment section of the sidewalk requirements in Section 23.403 (14)(a)(i) was added to the Municipal Code in May 2004. It allows Council to postpone the construction under one of two criteria: (1) premature installation or (2) unusual topography. In the case of deferment, financial security is required and an approval by City Council would be required in order to record the Minor Subdivision Final Plat.

Under Section 23.403 (14)(a)(i), a deferment for the installation of sidewalks may be granted by the City Council when topographic conditions exist that make the sidewalk installation difficult or when the installation of the sidewalk is premature. Where the installation of a sidewalk is deferred by the City Council, an agreement will be executed between the property owner/developer and the City of Ames that will ensure the future installation of the sidewalk. The deferment agreement will be accompanied by a cash escrow, letter of credit, or other form of acceptable financial security to cover the cost of the installation of the sidewalk.

There are a wide variety of situations that require the re-platting of land, which triggers a staff review of public infrastructure existence. In some cases, it could be a matter of subdividing a large vacant tract into several smaller lots. In other cases, it could be demolishing existing buildings and consolidating all the small lots into one large lot for a new development. In this case, it is splitting a small portion of an adjacent lot to be consolidated with the subject lot in order to obtain legal ownership of a privately maintained sewer line.

ALTERNATIVES:

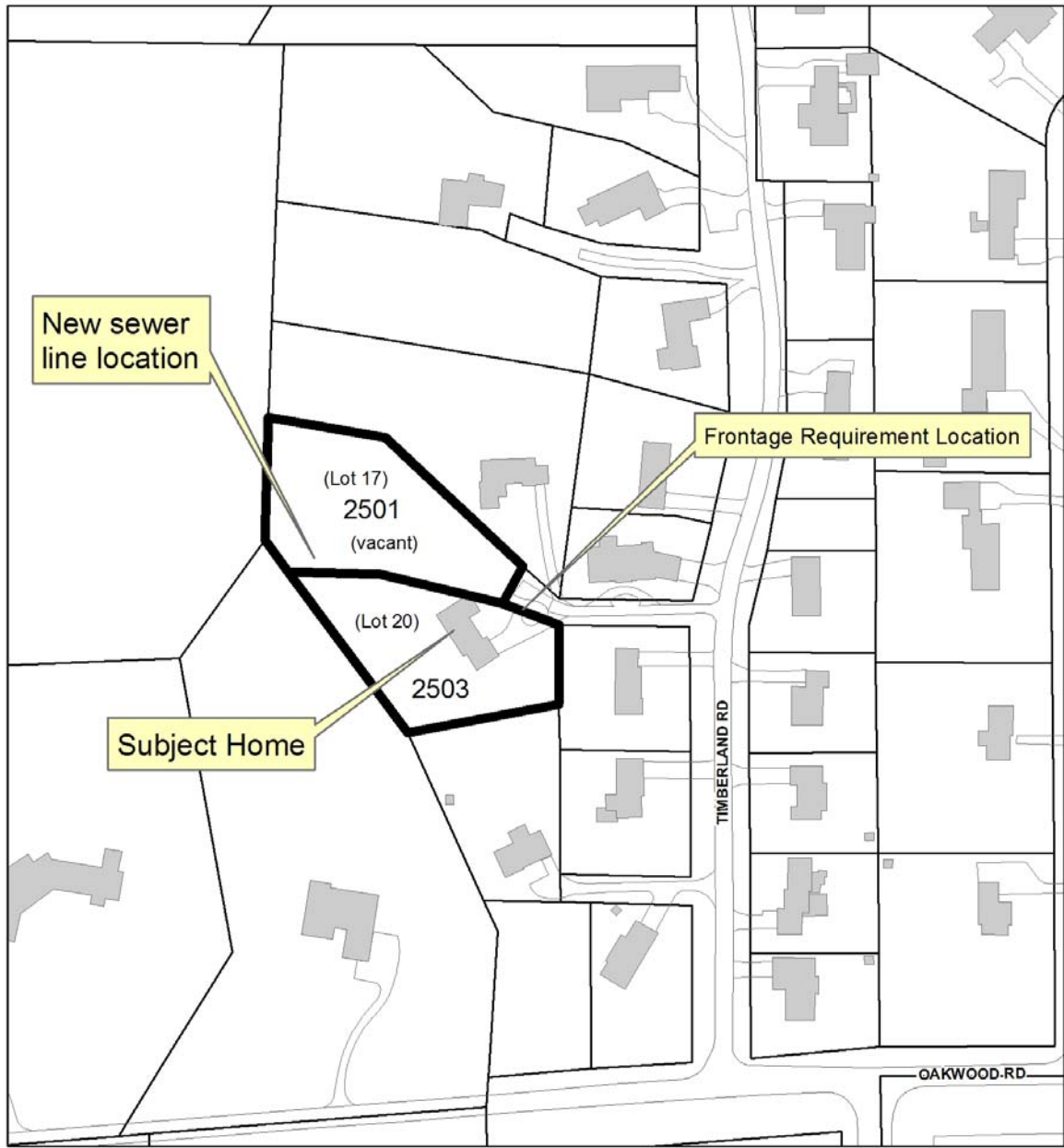
1. The City Council can waive all the street and frontage requirements for these two lots for the purpose of the owner of Lot 20 to plat and consolidate into one parcel a portion of land over the sewer service for 2503 Timberland Road, with the condition that a Plat of Survey be recorded which consolidates the split portion over the sewer service, with Lot 20, into one new parcel.
2. The City Council can deny the request to waive the street and frontage requirements for Lots 17 and 20 of Timberland Heights Subdivision after determining that neither of the waiver criteria has been met.
3. The City Council can refer this request back to staff for additional information.

MANAGER'S RECOMMENED ACTION:

Although the property owners did not specifically cite in their December letter how the waiver criteria have been satisfied, staff has determined that both criteria have been satisfied for the following reasons:

- A. Relative to the change which has occurred (installation of a new sewer service line), the installation of all the street and street frontage requirements would be a significant economic hardship and does not balance the public interest with the change that has occurred.
- B. There is physically no room to install the required improvements within the existing right-of-way, unless additional private land was dedicated to the public.
- C. There are no proposed development changes that would increase traffic to these lots.

Therefore, it is the City Manager's recommendation that the City Council approve Alternative #1, waiving the street and frontage requirements for these two lots with the condition that a Plat of Survey be recorded which consolidates the split portion over the sewer service, with Lot 20, into one new parcel.



**Location Map
2501 & 2503 Timberland Road**

