

CITY OF PLYMOUTH
AGENDA
Regular Planning Commission
June 15, 2022, 7:00 PM

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**
2. **PUBLIC FORUM**—*Individuals may address the Commission about any item not contained on the regular agenda. A maximum of 15 minutes is allotted for the Forum. If the full 15 minutes are not needed for the Forum, the Commission will continue with the agenda. The Commission will take no official action on items discussed at the Forum, with the exception of referral to staff for future reports.*
3. **APPROVE AGENDA**—*Planning Commission members may add items to the agenda for discussion purposes or staff direction only. The Commission will not normally take official action on items added to the agenda.*
4. **CONSENT AGENDA**—*These items are considered to be routine and enacted by one motion. There will be no separate discussion of these items unless a Commission member or citizen so requests, in which event the item will be removed from the Consent Agenda and placed elsewhere on the agenda.*
 - 4.1 [Adopt proposed June 1, 2022 Planning Commission minutes.](#)
[Minutes.pdf](#)
 - 4.2 [Variance for a six-foot high privacy fence and gate to be located in a front yard for property located at 17330 County Road 24 \(Britta Retrum - 2022040\)](#)
[Planning Commission Report](#)
[Applicant's Narrative](#)
[Variance Standards](#)
[Location Map](#)
[Aerial](#)
[Notification Area Map](#)
[Survey With Shrub Line and Fence](#)
[Site Photos](#)
[Fence Style](#)
[Draft Resolution](#)
5. **PUBLIC HEARINGS**
 - 5.1 [Conditional use permit to allow an indoor commercial recreation use in the I-2 zoning district at 12975 16th Avenue \(The Vibe Dance and Fitness, LLC -- 2022041\).](#)
[Planning Commission Report](#)
[Resolution](#)

CUP Standards
Location Map
Aerial Map
Notification Map
Applicant Narrative and Graphics

6. NEW BUSINESS

7. ADJOURNMENT

**Regular
Planning
Commission****June 15, 2022****To:** Dave Callister, City Manager**Prepared by:** Chloe McGuire, Planning and Development Manager**Reviewed by:** Danette Parr, Community & Economic Development Director**Item:** **Adopt proposed June 1, 2022 Planning Commission minutes.**

1. Action Requested:

Adopt the proposed minutes from the June 1, 2022 Planning Commission meeting.

2. Background:

The regular Planning Commission meeting was held on June 1, 2022.

3. Budget Impact:

N/A

4. Attachments:[Minutes.pdf](#)

Proposed Minutes Planning Commission Meeting June 1, 2022

Chair Boo called a Meeting of the Plymouth Planning Commission to order at 7:00 p.m. in the Council Chambers of City Hall, 3400 Plymouth Boulevard, on June 1, 2022.

COMMISSIONERS PRESENT: Chair Michael Boo, Commissioners Bryan Oakley, Donovan Saba, Julie Pointner, Julie Olson

COMMISSIONERS ABSENT: Commissioners Marc Anderson, Clark Gregor

STAFF PRESENT: Planning and Development Manager Chloe McGuire, Senior Planner Lori Sommers

Chair Boo led the Pledge of Allegiance.

Approval of Agenda

Motion was made by Commissioner Oakley and seconded by Commissioner Olson to approve the agenda. With all Commissioners voting in favor, the motion carried.

Consent Agenda

(4.1) Planning Commission minutes from meeting held on May 4, 2022.

(4.2) Variance for a basketball court for property located at 15800 43rd Place (David and Amy Schmidt -- 2022-035)

Motion was made by Commissioner Oakley and seconded by Commissioner Pointner to approve the consent agenda. With all Commissioners voting in favor, the motion carried.

New Business

(5.1) Variance to the ordinary high water level setback to allow construction of a three-season porch at 2375 E. Medicine Lake Blvd. (Mom's Design Build -- 2022037).

Senior Planner Sommers gave an overview of the staff report.

Senior Planner Sommers noted for the record that there was one letter of support received before the meeting, which was included in the packet, and one received via email. Both letters were from the adjacent neighbors to the east.

Chair Boo asked if the variance request would impact the natural environment or ordinary high-water line. Senior Planner Sommers answered no.

Chair Boo introduced the applicant, Owen Sweeney, Mom's Design Build, who stated that the lot is one of the more constrained lots that he had seen as a landscape designer.

Commissioner Oakley stated that he appreciated that the applicant talked with the adjacent neighbors about the project and felt the request did meet the warrants for a variance because the home is already within the setback, and that the porch is a minimal extension.

Motion was made by Commissioner Oakley, and seconded by Commissioner Olson, to recommend approval of the request for the variance to the ordinary high water level setback to allow construction of a three-season porch, subject to the supporting resolutions. With all Commissioners voting in favor, the motion carried.

Adjournment

Chair Boo adjourned the meeting at 7:19 pm

**Regular
Planning
Commission**

June 15, 2022

To: Planning Commission**Prepared by:** Kip Berglund, Senior Planner**Reviewed by:** Danette Parr, Community & Economic Development Director**File No:** 2022040

1. Applicant:

Britta Retrum

2. Proposal:

Variance request for a six-foot high privacy fence and gate to be located in a front yard

3. Location:

17330 County Road 24

4. Guiding:

LA-1 (living area 1)

5. Zoning:

RSF-2 (single family detached 2)

6. School District:

Wayzata (#284)

7. Review Deadline:

September 15, 2022

8. Brief Description:

The applicant is requesting approval of a variance to allow the installation of a six-foot high privacy fence and gate in the front yard where the maximum height specified for fences within a front yard is 3.5 feet high for the style proposed.

9. Attachments:

Planning Commission Report
Applicant's Narrative
Variance Standards
Location Map
Aerial
Notification Area Map
Survey With Shrub Line and Fence
Site Photos
Fence Style
Draft Resolution

Planning Commission Report Information

**Britta Retrum - Variance Request for Fence in the Front Yard, 17330
County Road 24
(2022040)**

INTRODUCTION

The applicant is requesting approval of a variance to allow the installation of a six-foot high privacy fence and gate in the front yard, where the maximum height specified for fences within a front yard is 3.5 feet high if solid or up to 4.5 feet high if less than 50 percent opacity.

Notice of the public meeting was mailed to all property owners within 200 feet of the site. A copy of the notification area map is attached.

CONTEXT:

Surrounding Land Use and Zoning

	Adjacent Land Use	Guiding	Zoning
North, East & West	Single-family homes in Seven Ponds 4 th Isaiah, and Windsong Subdivisions	LA-1 (living area 1)	RSF-2 (single family detached 2)
South	Single-family homes in Mary Maki Addition and Ironhorse Estate Subdivisions	LA-1 (living area 1)	RSF-1 (single family detached 1)

Natural Characteristics of Site

The property is located within the Bassett Creek Watershed District. The site is not located within a shoreland or floodplain overlay district.

A high-quality wetland is in the northern portion of the property. The proposed fence would be in the front yard and would not affect the wetland.

Previous Actions Affecting Site

The existing home was constructed in 1962 on unplatted property. The subject property remains unplatted. An area near and west of the driveway is located on a separate parcel platted as Outlot A, Windsong, also owned by the applicant.

LEVEL OF CITY DISCRETION IN DECISION-MAKING:

The city's discretion in approving or denying a variance is limited to whether the proposal meets the standards for a variance. The city has a relatively high level of discretion with a variance because the burden of proof is on the applicant to show that they meet the standards for a variance.

ANALYSIS OF REQUEST:

Section 21130.01, Subd. 5 of the zoning ordinance states that fences constructed of materials with an opacity of up to 100 percent and not exceeding 6.5 feet in height (includes ground clearance at the bottom and support posts/post caps at the top), provided that the actual fence panels/boards do not exceed 6 feet, may be located at or behind the minimum front setback lines, as required for the principal structure on the lot. The exception is, on corner lots where the rear wall of the principal building (wall opposite the wall where the property is addressed) faces the rear wall of an abutting principal building, such fences may be located within the required front yard area that lies between the side wall of the principal building and the abutting side street, from the rear wall of the principal building to the rear lot line. Said fence may also be located within a required front yard area that qualifies as an equivalent rear or side yard as defined by this Chapter.

The zoning ordinance defines an equivalent yard as the open area on through and corner lots, which may be required and/or permitted as an alternative to a required rear or side yard between the principal building and an abutting arterial, major collector, or other public street where access has been prohibited.

The subject property has direct access from County Road 24, which is classified as an arterial road, and the area abutting the front property line does not qualify as an equivalent yard. Therefore, the home and six-foot high fences would also need to meet the minimum 50-foot setback requirement and a variance is required for the proposed fence location.

The applicant is requesting a variance to install a six-foot high, cedar style, privacy fence in the front yard, roughly 25 feet from the front property line or 35 feet from the street when including right-of-way area. A wrought iron style, manual opening/closing swing gate, up to six feet in height,, would be installed to cover the driveway area. The applicant states that the proposed fence would provide safety for three young children and could help to mitigate noise from the traffic from County Road 24. Under the proposal, the fence would be screened from County Road 24 by an existing hedge row, roughly six feet in height, as shown in the photos below. Staff notes that there is not height restriction on plantings, except for plantings within or near a sight visibility triangle. The existing hedge row is not located within or near a sight visibility triangle.

The redline in the aerial view depicts the general location of the proposed fence and the other photo is the existing view of the subject property from County Road 24.



The adjacent properties to the east and west, also abutting County Road 24, have access from the Kimberly Lane and 32nd Avenue cul-de-sacs as opposed to directly from County Road 24 like the subject property. Staff determined that the proposed fence location will not affect the visibility of adjacent properties to and from County Road 24. In addition, the subject property would have roughly 35 feet from the proposed fence location to County Road 24 for visibility.

View of properties to the east and west from subject property



As previously mentioned, an area on or just west of the driveway is located on a separate parcel. The home was built in 1962, prior to the platting of the Windsong subdivision to the west of the subject property in 1979. A portion of the driveway was built on or near the property line and contained trees most-likely planted by the original property owner. Therefore, rather than moving the driveway, and to preserve existing trees, a 12-foot wide by 135.99-foot-long area adjacent to the subject property was platted as Outlot A, Windsong. The applicant owns the Outlot. Conditions are included in the attached resolution that requires a separate fence permit and consolidation of the subject properties prior to the issuance of a fence permit if any portion of the fence or gate is located within the Outlot. Fences and gates are considered accessory structures and accessory structures are not permitted on properties that do not contain a principal structure.

FINDINGS:

In review of the request, staff finds that all the applicable variance standards are met, as follows:

- 1) The requested variance, and its resulting construction, would be in harmony with the general purposes and intent of the ordinance, and would be consistent with the city's comprehensive plan.
- 2) The applicant has demonstrated that there are practical difficulties in complying with the ordinance regulations, because:
 - a. The applicant proposes to use the property in a reasonable manner.
 - b. The request is due to unique circumstances that were not created by the applicant. It would allow a fence to be installed behind an existing hedge row, which was planted prior to the applicant purchasing the property, which would screen the view of the fence from the public street.
 - c. The variance would not alter the essential character of the lot or neighborhood.
- 3) The requested variance is not based upon economic considerations. The applicant is requesting the variance to address a need for safety and noise mitigating purposes along an arterial roadway.
- 4) The variance, and its resulting construction, would not be detrimental to the public welfare, nor would it be injurious to other land or improvements in the neighborhood. The fence would be screened from the public street by an existing hedge row.
- 5) The variance, and its resulting construction, would not impair an adequate supply of light and air to adjacent properties, nor would it increase traffic congestion or the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood.
- 6) The variance requested is the minimum action required to address the practical difficulties to allow for addressing safety concerns and noise mitigating purposes.

RECOMMENDATION:

Community and Economic Development Staff recommends approval of the requested variance at 17330 County Road 24, subject to the findings and conditions listed in the attached resolution.

ATTACHMENTS:

1. Applicant's Narrative
2. Variance Standards
3. Location Map
4. Aerial Photo
5. Notification Area Map
6. Site Graphics
7. Draft Resolution Approving Variance

P:/Planning Applications/2022/2022040/Comm Dev/PC Report (6-15-2022)

Chloe McGuire

From: Britta Retrum <brittaretrum@gmail.com>
Sent: Tuesday, May 17, 2022 12:07 PM
To: Chloe McGuire
Subject: Variance Application: 17330 County Road 24

To whom it may concern,

My name is Britta Retrum and I am a Plymouth Resident, residing at 17330 County Road 24. I am requesting a variance that will allow me to install a 6 foot, cedar privacy fence and driveway gate (moveable/rolling) between the road and my house. The answers to the required information for a variance application are provided below.

My property is located on a 4 lane, 45 mph, County Road which poses a significant safety concern. I have 3 small children ages 6, 4, and 2, and the fence would help ensure their safety. In addition, the noise from traffic is also a factor, thus the request for the 6 foot variance.

- Is the request reasonable?

Yes. The neighbors to the west have an existing 6 foot fence that runs along the county road. Although their fence resides on the side of their property, the height of their privacy fence would match that of my requested variance. Very few properties have a driveway who's entrance is on a busy county road.

- Is the request based on economic considerations alone?

No. There are no economic benefits to the fence.

- Would the project be detrimental to the public welfare or injurious to neighbors?

No. The fence poses no risk to the public and would not be injurious to the neighbors. There are no adjacent driveways which would be affected by the variance.

- Is the request based on circumstances unique to the property and not caused by the landowner?

Yes. As previously stated, the property is on a congested county road. The driveway gate would be used when my children are playing in the front yard and on the driveway. Last summer there was a fatal hit and run just a block down the road.

- Would the project impair an adequate supply of light and air to adjacent properties? Would it substantially increase traffic congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

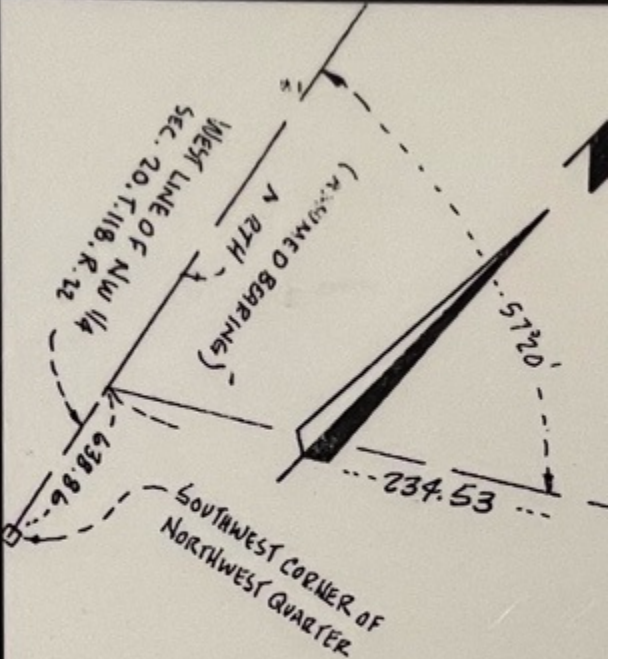
No.

- Is the variance the minimum action required to address or alleviate the difficulties onsite?

Yes. With the location of my home, it is the best and only option to help to alleviate the issue.

Thank you for your consideration,
Britta Retrum

PROPERTY DESCRIPTION



That part of the northwest 1/4 of section 20, Township 118, Nor Range 22, West of the 5th Principal Meridian, described as follows: Commencing at the southwest corner of said northwest 1/4 of section 20; thence north along the west line of said northwest 1/4 a distance of 638.86 feet, (said west line having an assumed bearing of due north for purposes of this description); thence north 57 degrees 20 minutes east a distance of 234.53 feet to the actual point of beginning of land to be described; thence continuing north 57 degrees 20 minutes east a distance of 112.47 feet thence south 44 degrees 42 minutes east a distance of 362.00 feet more or less, to the center line of County Road No. 24; thence southeasterly along the centerline of said County Road to the intersection with a line bearing south 44 degrees 42 minutes east from the point of beginning; thence north 44 degrees 42 minutes west more or less, to the point of beginning, except that part thereof taken for County Road No. 24 and

Outlot A, Windsong, Hennepin County, Minnesota

DEMARS-GABRIEL
LAND SURVEYORS, INC.

3030 Harbor Lane No.
Plymouth, MN 55447
Phone: (763) 559-0908
Fax : (763) 559-0479

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

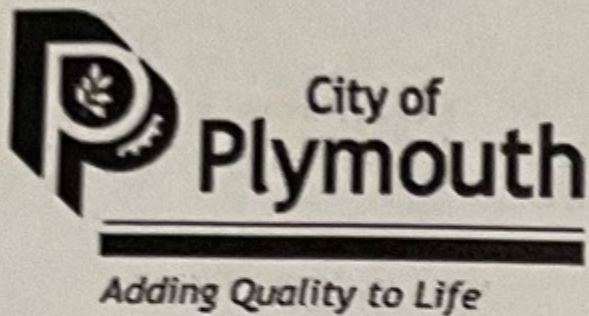
David E. Crook

Date: _____ Minn. Reg. No. 22414

File No.
11041

Book-Po

Scale
1"=30'



PLANNING APPLICATION

Community Development Department
3400 Plymouth Boulevard
Plymouth, MN 55447
(763) 509-5450
FAX (763) 509-5407

Please read before completing. The city will not begin schedule, application checklists and information sheets from the planning division or on the city's website (<http://www.cityofplymouth.com>) should review the specific code requirements and detail Ordinance. The zoning ordinance is also found on the city website.

1. PROPERTY LOCATION: (Street address, if applicable)

17330 County Rd 24 Plymouth

2. LEGAL DESCRIPTION: residential

3. PROPERTY FEE OWNER NAME: Britta

COMPANY NAME: NA

ADDRESS: 17330 County Rd

Planning and Zoning Application Form
Page 2

6. BRIEF DESCRIPTION OF REQUEST: (Attach separate

See Email.

I hereby apply for the above consideration and declare that the information provided is true and accurate per city code and ordinance requirements. I understand that the Planning and Zoning division finds that it is complete. I understand and agree that the application is under consideration.

PLEASE NOTE: If the property fee owner is not the applicant, the applicant must be the property fee owner in order to make application.

PROPERTY FEE OWNER(S) SIGNATURE(S): B. W. [Signature]

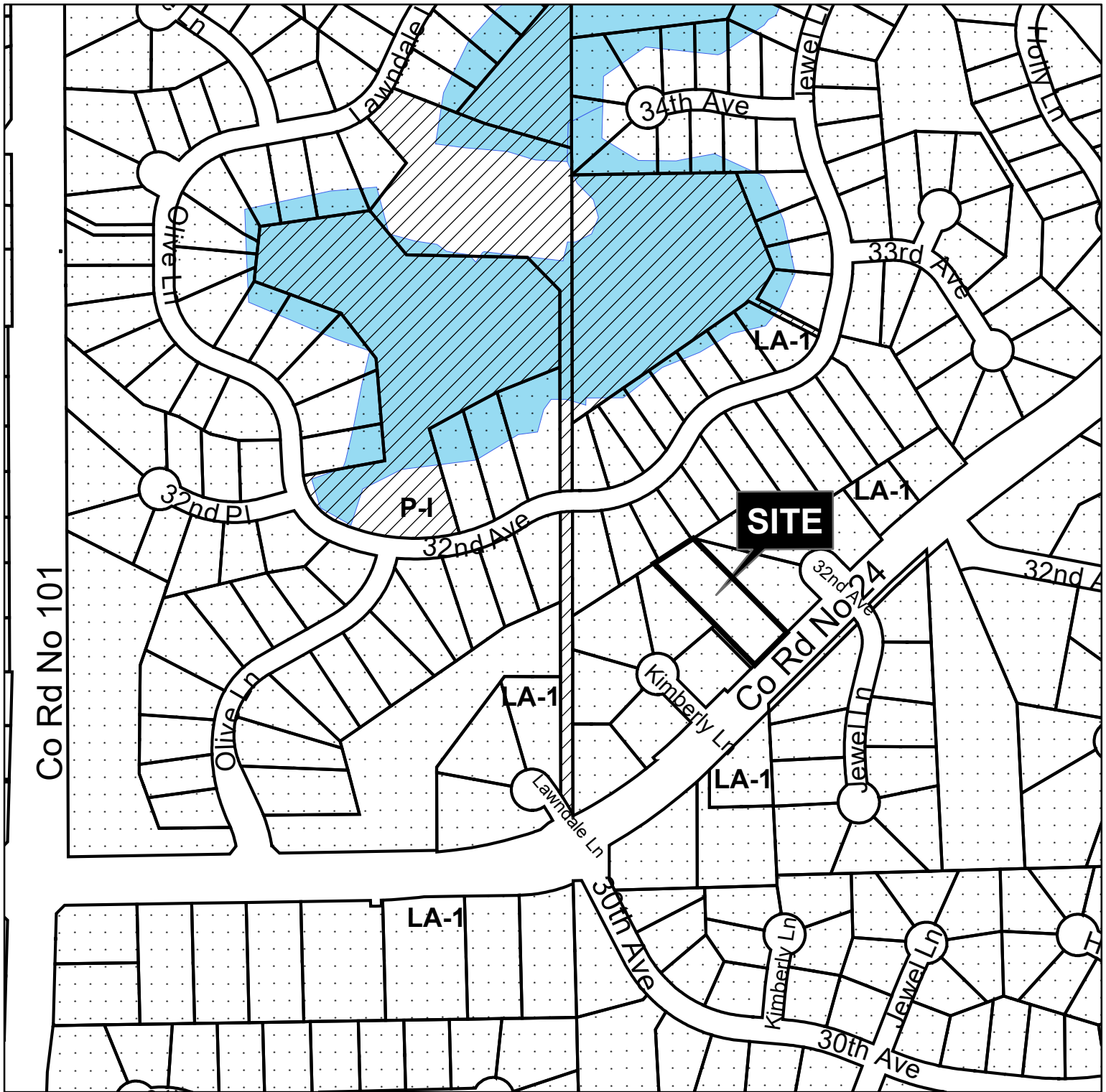
ZONING ORDINANCE VARIANCE STANDARDS

Community Development Department
3400 Plymouth Boulevard
Plymouth, MN 55447
(763)509-5450
FAX (763) 509-5407

The City Council or Zoning Administrator may approve a variance application (major or minor, respectively) only upon finding that all of the following criteria, as applicable, have been met:

1. The variance, and its resulting construction or project, would be in harmony with the general purposes and intent of this Chapter, and would be consistent with the comprehensive plan.
2. The variance applicant has satisfactorily established that there are practical difficulties in complying with this Chapter. “Practical difficulties” means that:
 - a. the applicant proposes to use the property in a reasonable manner not permitted by this Chapter;
 - b. the plight of the landowner is due to circumstances unique to the property that were not created by the landowner; and
 - c. the variance, if granted, would not alter the essential character of the locality.
3. The variance request is not based exclusively upon economic considerations.
4. The variance, and its resulting construction or project, would not be detrimental to the public welfare, nor would it be injurious to other land or improvements in the neighborhood.
5. The variance, and its resulting construction or project, would not impair an adequate supply of light and air to adjacent properties, nor would it substantially increase traffic congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood.
6. The variance requested is the minimum action required to address or alleviate the practical difficulties.

Section 21030-Plymouth Zoning Ordinance



2022040
Britta Retrum
17330 County Road 24
Request for a Variance




Legend

- C, Commercial
- CC, City Center
- CO, Commercial Office
- IND
- LA-1, Living Area 1
- LA-2, Living Area 2
- LA-3, Living Area 3
- LA-4, Living Area 4
- LA-5
- MXD
- MXD-R
- P-I, Public/Semi-Public/Institution



2022040 -- Aerial Photograph

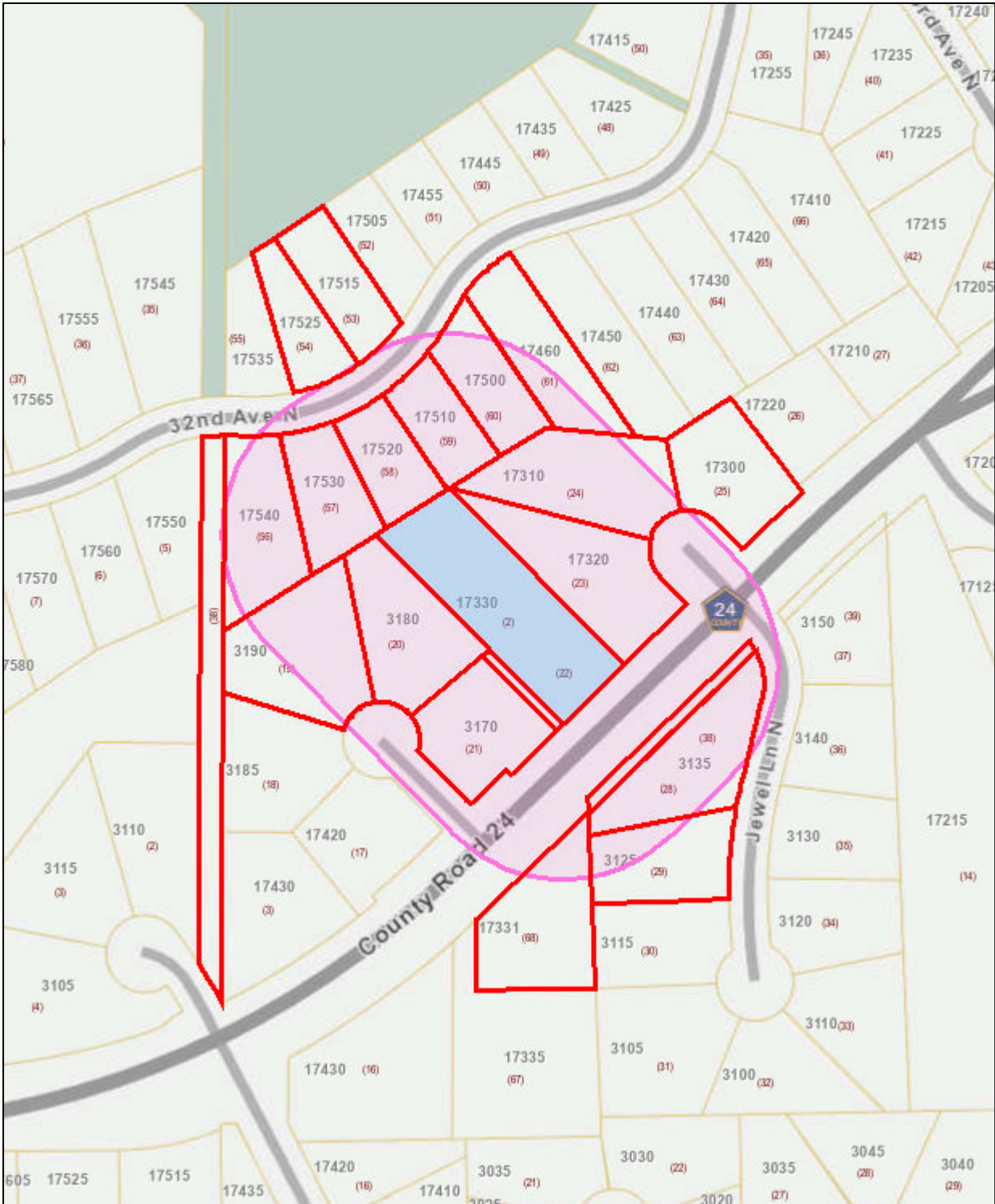
 = SITE





Hennepin County Locate & Notify Map

Date: 6/1/2022



Buffer Size: 200

Map Comments:

0 50 100 200 Feet
|-----|-----|-----|-----|

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

For more information, contact Hennepin County GIS Office
300 6th Street South, Minneapolis, MN 55487 / gis.info@hennepin.us

PLEASE
DO NOT
REMOVE
FROM
PROPERTY

ISAIAH
ADDITION

544°42'00"E
--- 321.52 ---

N 57° 20' 00" E
-- 112.47 --

S 44° 42' 00" E
--- 209.97 ---

PROPERTY DESCRIPTION

That part of the northwest 1/4 of Section 20, Township 118, North Range 22, West of the 5th Principal Meridian, described as follows: Commencing at the southwest corner of said northwest 1/4 of Section 20; thence north along the west line of said northwest 1/4 a distance of 638.86 feet, (said west line having an assumed bearing of due north for purposes of this description); thence north 57 degrees 20 minutes east a distance of 238.53 feet to the actual point of beginning of land to be described; thence continuing north 57 degrees 20 minutes east a distance of 112.47 feet; thence south 44 degrees 42 minutes east a distance of 362.00 feet, more or less, to the center line of County Road No. 24; thence southwesterly along the centerline of said County Road to the intersection with a line bearing south 44 degrees 42 minutes east from the point of beginning; thence north 44 degrees 42 minutes west more or less, to the point of beginning, except that part thereof taken for County Road No. 24 and

Outlet A, Windsong, Hennepin County, Minnesota

WIND SONG

OUTLOT
--- 135.99 ---
344°42'00"E
5

- o Denotes iron monument
- Denotes offset stake
- X 000.0 Denotes existing elev.
- (000.0) Denotes proposed elev.

Proposed garage floor elev. = 1012.0
Proposed top of foundation elev. = 1012.33
Proposed lowest floor elev. = 1008.33 (CRAWL SPACE)

**DEMARS-GABRIEL
LAND SURVEYORS, INC.**

3030 Harbor Lane No.
Plymouth, MN 55447
Phone:(763) 559-0908
Fax :(763) 559-0479

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

David E. Crook

Date: _____

Minn. Reg. No. 22414

File No.
11041

Book-Page

Scale
1"=30'

CERTIFICATE OF SURVEY FOR:

Mr. Jim Hayward
17330 County Road No. 24
Plymouth, Minnesota 55447







CEDAR PRIVACY

MIDWEST FENCE
est. 1947

MIDWEST FENCE
800-451-2222
1000 ALABAMA AVE. NORTH ST. PAUL, MN 55104

FRAMED BATTEN BOARD
ACCENT RAIL
FEDERAL POST CAPS

Celebrating
75
1947 2022
Years

Whether your need is for privacy or just containment, Western Red Cedar is well known for its resistance to decay, rich grain and vibrant colors. These attributes make Western Red Cedar a preferred material for outdoor building applications. Midwest Fence exclusively installs DuraCedar posts, which are cedar posts pressure treated with a natural wood preservative lasting up to 50% longer than standard cedar posts.

2 CEDAR PRIVACY

CITY OF PLYMOUTH

RESOLUTION No. 2022-

A RESOLUTION APPROVING A VARIANCE FOR BRITTA RETRUM FOR PROPERTY LOCATED AT 17330 COUNTY ROAD 24 (2022040)

WHEREAS, Britta Retrum has requested approval of a variance for a six-foot high privacy fence and gate to be in a front yard; and

WHEREAS, the subject property is legally described as:

That part of the northwest 1/4 of Section 20, Township 118, North Range 22, West of the 5th Principal Meridian, described as follows: Commencing at the southwest corner of said northwest 1/4 of Section 20; thence north along the west line of said northwest 1/4 a distance of 638.86 feet, (said west line having an assumed bearing of due north for purposes of this description); thence north 57 degrees 20 minutes east a distance of 234.53 feet to the actual point of beginning of land to be described; thence continuing north 57 degrees 20 minutes east a distance of 112.47 feet; thence south 44 degrees 42 minutes east a distance of 362.00 feet, more or less, to the center line of County Road No. 24; thence southwesterly along the centerline of said County Road to the intersection with a line bearing south 44 degrees 42 minutes east from the point of beginning; thence north 44 degrees 42 minutes west more or less, to the point of beginning, except that part thereof taken for County Road No. 24;

AND

Outlot A, Windsong, Hennepin County, Minnesota; and

WHEREAS, the Planning Commission has reviewed said request at a duly called public meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLYMOUTH, MINNESOTA, that it should and hereby does approve the request by Britta Retrum for a variance to allow the installation of a six-foot high privacy fence and gate in the front yard, where the maximum height specified for fences within a front yard is 3.5 feet high if solid or up to 4.5 feet high if less than 50 percent opacity, for property located at 17330 County Road 24, subject to the following:

1. The requested variance for a six-foot high fence and gate in the front yard, located at least 25 feet from the front property line, in accordance with the application and plans received by the City on May 17, 2022, and additional information on June 2, 2022, except as may be amended by this resolution.
2. The requested variance is approved, based on the finding that the applicable variance standards would be met, specifically:

- a) The requested variance would be in harmony with the general purposes and intent of the ordinance and would be consistent with the City's comprehensive plan
 - b) The applicant has demonstrated that there are practical difficulties in complying with the ordinance regulations, because:
 - 1. The applicant proposes to use the property in a reasonable manner.
 - 2. The request is due to unique circumstances that were not created by the applicant. It would allow a fence to be installed behind an existing hedge row, which was planted prior to the applicant purchasing the property, which would screen the view of the fence from the public street.
 - 3. The variance would not alter the essential character of the lot or neighborhood.
 - c) The variance request is not based upon economic considerations. The applicant is requesting the variance to address a need for safety and noise mitigating purposes along an arterial roadway.
 - d) The variance, and its resulting construction, would not be detrimental to the public welfare, nor would it be injurious to other land or improvements in the neighborhood. The fence would be screened from the public street by an existing hedge row.
 - e) The variance would not impair an adequate supply of light and air to adjacent properties, nor would it increase traffic congestion or the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood.
 - f) The variance requested is the minimum action required to address the practical difficulties to allow for addressing safety concerns and noise mitigating purposes.
- 3. A separate fence permit is required prior to the commencement of the project.
 - 4. **Prior to the issuance of a fence permit**, the applicant shall consolidate the two properties through Hennepin County, if any portion of the fence or gate will cross the property line into Outlot A, Windsong.
 - 5. The approved gate is up to six-foot high, wrought iron style, swinging gate, which is operated manually. Any proposed electrical gate or components would require a separate electrical permit.
 - 6. House address numbers shall be placed in a location visible from County Road 24 either on the street side of the fence or gate, or high enough on the house or garage.
 - 7. The variance shall expire one year after the date of approval, unless the property owner or applicant has commenced the authorized improvement or use, or unless the applicant, with the consent of the property owner, has received prior approval from the city to extend the expiration date for up to one additional year, as regulated under Section 21030.06 of the zoning ordinance.

APPROVED by the City Council this **** day of *****.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS.

The undersigned, being the duly qualified and appointed City Clerk of the City of Plymouth, Minnesota, certifies that I compared the foregoing resolution adopted at a meeting of the Plymouth City Council on *****, with the original thereof on file in my office, and the same is a correct transcription thereof.

WITNESS my hand officially as such City Clerk and the Corporate seal of the City this _____ day of _____, _____.

City Clerk

**Regular
Planning
Commission****June 15, 2022****To:** Planning Commission**Prepared by:** Lori Sommers, Senior Planner**Reviewed by:** Danette Parr, Community & Economic Development Director**File No:** 2022041

1. Applicant:

The Vibe Dance and Fitness, LLC

2. Proposal:

Conditional use permit to allow an indoor commercial recreation use in the I-2 zoning district.

3. Location:

12975 16th Avenue

4. Guiding:

IND (industrial)

5. Zoning:

I-2 (general industrial)

6. School District:

ISD284 (Wayzata)

7. Review Deadline:

September 21, 2022

8. Brief Description:

The applicant is requesting approval of a conditional use permit to allow an indoor commercial recreation use in the I-2 zoning district.

9. Attachments:

Planning Commission Report
Resolution
CUP Standards
Location Map
Aerial Map
Notification Map
Applicant Narrative and Graphics

**PLYMOUTH COMMUNITY AND
ECONOMIC DEVELOPMENT
DEPARTMENT**

**PLANNING AND ZONING
STAFF REPORT**

TO: Plymouth Planning Commission

FROM: Lori Sommers, Senior Planner (509-5457) through Danette M. Parr,
Community and Economic Development Director

MEETING DATE: June 15, 2022

APPLICANT: The Vibe Dance and Fitness, LLC

PROPOSAL: **Conditional use permit** for an indoor commercial recreation use

LOCATION: 12975 16th Avenue

GUIDING: IND (industrial)

ZONING: I-2 (general industrial)

REVIEW DEADLINE: September 21, 2022

DESCRIPTION OF REQUEST:

The applicant is requesting a conditional use permit to allow an indoor commercial recreation use in the I-2 zoning district for property located at 12975 16th Avenue. Under the plan, The Vibe Dance and Fitness would occupy 4,848 square feet of the 19,816-square foot multi-tenant building. The zoning ordinance allows indoor commercial recreation uses in the industrial districts upon issuance of a conditional use permit.

Notice of the public hearing was published in the City's official newspaper and mailed to all property owners within 500 feet of the site. A copy of the notification area map is attached.

CONTEXT:Surrounding Land Uses

	Adjacent Land Use	Guiding	Zoning
North	Industrial (<i>Jet 55</i>)	IND	I-2
South	Luce Line Single Family Homes (<i>Glen Echo Ponds 2nd</i>)	LA-1	RSF-1
East	Chicago & Northwestern Railroad	IND	I-2
West	Industrial uses (<i>Primex, Controlwerx</i>)	IND	I-2

Natural Characteristics of Site

The lot is located in the Bassett Creek watershed. It is not located in a shoreland or floodplain management overlay district, and there are no wetlands on the property.

Previous Actions Affecting Site

The building was constructed in 1989.

LEVEL OF CITY DISCRETION IN DECISION-MAKING:

The City's discretion in approving or denying a conditional use permit is limited to whether or not the proposal meets the standards listed in the zoning ordinance. If it meets the specified standards, the City must approve the permit. However, the level of discretion is affected by the fact that some of the standards are open to interpretation.

ANALYSIS OF REQUEST:

The applicants are requesting approval of a conditional use permit for an indoor commercial recreation use to allow the operation of The Vibe Dance and Fitness. The applicant is proposing to construct a boutique training facility for dancers, focusing on one-on-one and small group training in the 4,848 square foot tenant space. The hours of operation are to be from 5 PM to 9 PM, during the week, with weekends starting at 9 AM to 2 PM. The site will have a total of eight part-time employees with no more than two employees at the facility at a time. No exterior site changes are proposed.

Parking is generally the main item that is reviewed for this type of application. The site is developed with one building but parking is shared with the adjacent building through a shared parking easement. The zoning ordinance requires that indoor commercial recreation uses provide one parking space for every 300 square feet of building space based on 90 percent of gross floor area, unless an applicant demonstrates that their parking needs are less than required by the ordinance. Consequently, the ordinance would require 15 parking spaces for this use, unless the applicant demonstrates that their parking needs are lower ($4,848 \times 90\% = 4363.2 / 300 = 15$).



Based on the other uses within both buildings, the zoning ordinance would require a total of 119 parking spaces. There are presently 140 total parking spaces for the two buildings. The proposal meets the City regulations relating to parking requirements.

The Planning Commission must review the requested conditional use permit for compliance with the standards listed in the zoning ordinance. A copy of the standards is attached. Staff used these standards to review the request and finds it would meet the applicable standards. Specifically, the proposed use would conform to the comprehensive plan, would not have adverse effects on public improvements in the area, would not impede the orderly development of the district, nor would it be detrimental to the surrounding properties or the city as a whole.

RECOMMENDATION:

Community and Economic Development Department staff recommends approval of the requested conditional use permit at 12975 16th Avenue, subject to the findings and conditions listed in the attached resolution.

ATTACHMENTS:

1. Draft Resolution Approving conditional use permit
2. Conditional use permit standards
3. Location Map
4. Aerial Photo
5. Notification Area Map
6. Applicant's Narrative and Graphics

CITY OF PLYMOUTH

RESOLUTION No. 2022-

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 12975 16TH AVENUE (2022041)

WHEREAS, The Vibe Dance and Fitness, LLC has requested approval of a conditional use permit to allow an indoor commercial recreation use in the I-2 (general industrial) zoning district at 12975 16th Avenue; and

WHEREAS, the subject property is legally described as:

Lot 4, Block "A", "Plymouth Orchards, Hennepin County, Minnesota" except that part thereof described as follows: Beginning at a point on the South line of said Lot 4, which point lies 30 feet distant Northeasterly from the Southwest corner of said Lot 4, and measured along said South line of said Lot 4; thence in a Northeasterly direction along the South line of said Lot 4 a distance of 179.44 feet to the Southeast corner of said Lot 4; thence North along the East line of said Lot 4 a distance of 597.12 feet to the Northeast corner of said lot 4; then West along the North line of said Lot 4 a distance of 30 feet to a point; then South parallel with and 30 feet Westerly from the said Easterly line of said Lot 4 a distance of 300.0 feet to a point; thence in a Southeasterly direction a distance of 350.0 feet, more or less, the point of beginning, together with that part of the North ½ of vacated Orchard Avenue lying between the Southerly extensions of the Westerly and Southeasterly lines of the above described property. Together with the vacated Orchard Avenue lying easterly of the southerly extension of the west line of said Lot 4 and a line 30.00 feet easterly of and parallel with the southerly extension of the west line of said Lot 4, Hennepin County, Minnesota; and

WHEREAS, the Planning Commission has reviewed said request at a duly called public hearing and recommends approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLYMOUTH, MINNESOTA, that it should and hereby does approve the request by The Vibe Dance and Fitness, LLC for a conditional use permit to allow a 4,848 square foot indoor commercial recreation use in the I-2 (general industrial) zoning district for 12975 16th Avenue, subject to the following findings and conditions:

1. A conditional use permit is approved in accordance with the application received by the City on May 23, 2022, with additional information on May 24, 2022, May 25, 2022, except as may be amended by this resolution.
2. The requested conditional use permit is approved with the findings that all applicable conditional use permit standards would be met, as outlined in the zoning ordinance.
3. A separate building permit is required prior to the commencement of the project.

4. Standard Conditions:

- a. Any subsequent phases or expansions are subject to required reviews and approvals per ordinance provisions.
- b. The conditional use permit shall expire one year after the date of approval, unless the property owner or applicant has started the project, or unless the applicant, with the consent of the property owner, has received prior approval from the city to extend the expiration date for up to one additional year, as regulated under Section 21015.07 of the Zoning Ordinance.

APPROVED by the City Council on this _____ day of _____, 2022.

STATE OF MINNESOTA)

COUNTY OF HENNEPIN) SS.

The undersigned, being the duly qualified and appointed City Clerk of the City of Plymouth, Minnesota, certifies that I compared the foregoing resolution adopted at a meeting of the Plymouth City Council on _____, 2022, with the original thereof on file in my office, and the same is a correct transcription thereof.

WITNESS my hand officially as such City Clerk and the Corporate seal of the City this _____ day of _____.

Jodi M. Gallup, City Clerk

ZONING ORDINANCE

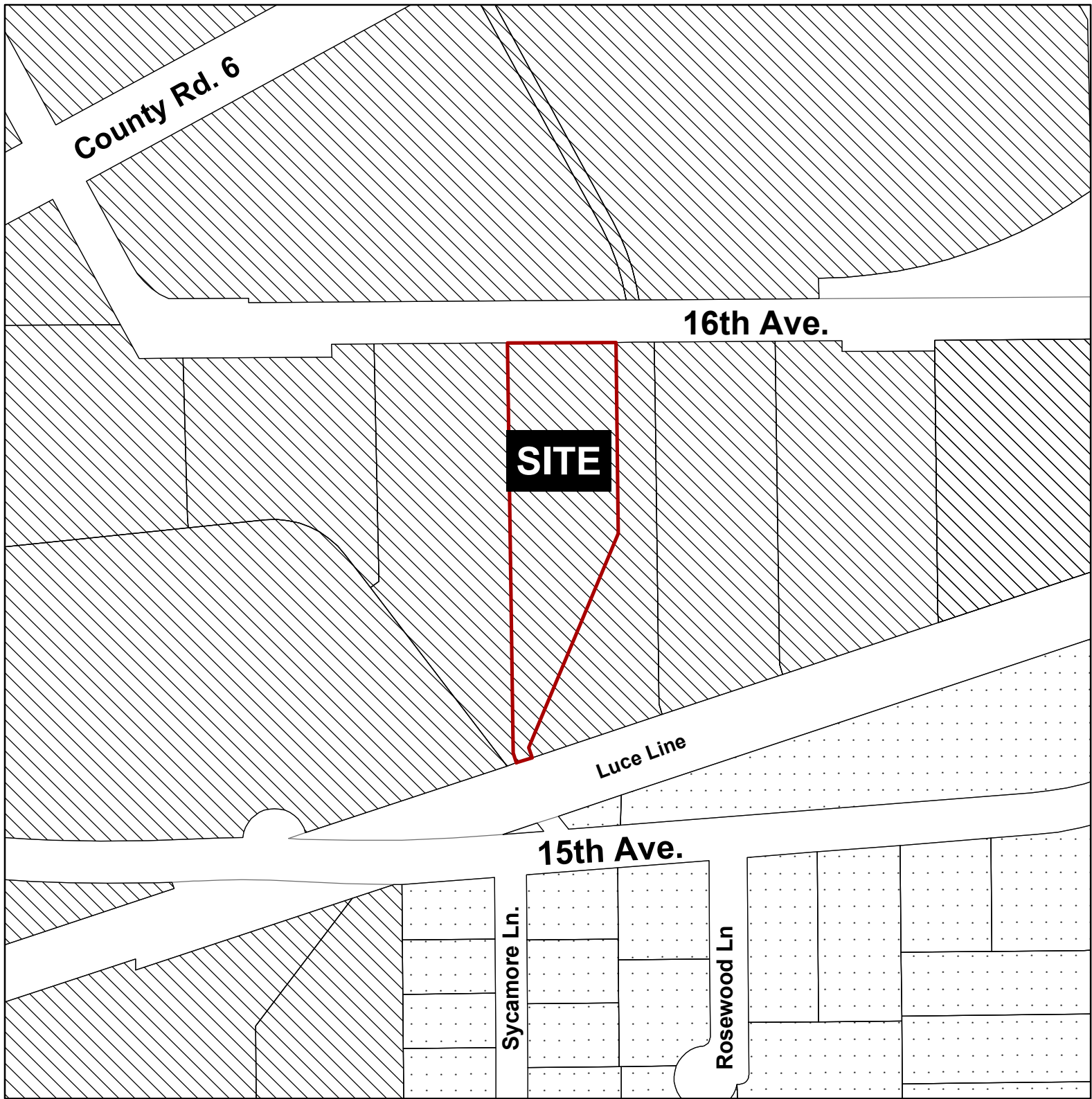
CONDITIONAL USE PERMIT STANDARDS

21015.02 **PROCEDURE:** Pursuant to Minnesota Statutes 15.99, an application for a conditional use permit shall be approved or denied within sixty(60) days from the date of its official and complete submission unless extended pursuant to Statute or a time waiver is granted by the applicant. If applicable, processing of the application through required state or federal agencies shall extend the review and decision-making period an additional sixty (60) days unless this limitation is waived by the applicant.

Subd.5. The Planning Commission shall consider possible adverse effects of the proposed conditional use. Its judgment shall be based upon (but not limited to) the following factors:

1. Compliance with and effect upon the Comprehensive Plan, including public facilities and capital improvement plans.
2. The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals, or comfort.
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
4. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
5. Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.
6. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.
7. The conditional use complies with the general and specific performance standards as specified by this Section and this Chapter.

Section 21015-Plymouth Zoning Ordinance



2022041
12975 16th Ave.
Request for CUP

Legend

- C, Commercial
- CC, City Center
- CO, Commercial Office
- IND
- LA-1, Living Area 1
- LA-2, Living Area 2
- LA-3, Living Area 3
- LA-4, Living Area 4
- LA-5
- MXD
- MXD-R
- P-I, Public/Semi-Public/Institutional

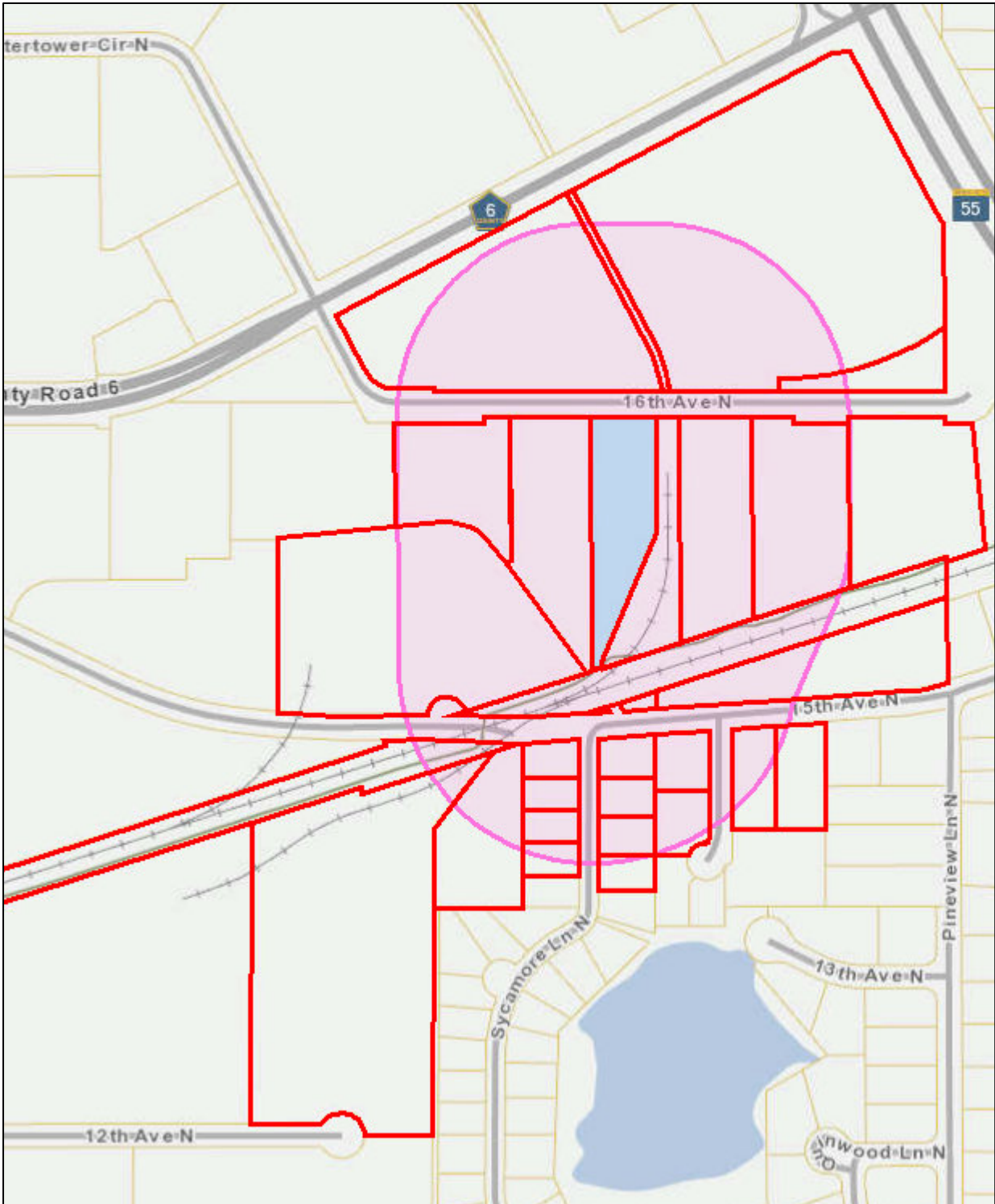


2022041
12975 16th Ave.
Request for CUP



Hennepin County Locate & Notify Map

Date: 5/25/2022



Buffer Size: 500

Map Comments:

2022041

0 100 200 400 Feet
|-----|-----|-----|-----|

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

For more information, contact Hennepin County GIS Office
300 6th Street South, Minneapolis, MN 55487 / gis.info@hennepin.us

The Vibe Dance and Fitness Request for Conditional Use: Additional Information

Business Definition: The Vibe Dance and Fitness is a boutique style training facility for dancers, focusing on one-on-one and small group training. The overall purpose of this facility, is to assist current dancers in working toward their individual goals, by offering high quality training.

This business would be a benefit to the community by providing a space for dancers of the surrounding areas to expand on their passions, improve their abilities, express themselves by using an art form, gain knowledge from credible and experienced instructors, and prepare them for their futures. This business also makes it a priority to supply knowledge and information regarding positive and healthy ways of living, supporting mental health needs, and teaching the importance of self care for body and mind. Dance is an extremely popular art form in MN, and The Vibe Dance and Fitness would allow dancers in the area to find a place where they can utilize their craft and improve.

Surrounding businesses: The Vibe would not be a detriment to any surrounding business. Owner and applicant have gone over the fit plan and remodel plan. Owner has approved this business for this space, the ability to co-exist with the other suites in the building, and agrees it will be a good fit for his property.

Operations: Our facility operations currently are and will remain as follows. There are no memberships. We are a boutique style facility, where clients sign up on a weekly basis for a spot in a small class or a private lesson. Our online system has a set capacity that disables sign ups once we are at our maximum for a class (maximum is 20 dancers). This capacity allows us to control the coming and going of clients, while also controlling traffic. We offer both small group instruction (5-20 dancers at most), and one-on-one instruction (one dancer and one instructor at a time), which makes up much of our day to day business. The Vibe Dance and Fitness is unique in the fact that it offers dancers the ability to train when their schedule allows, creating a flexible, yet also consistent training opportunity.

Hours of Operation: Hours of operation on weekdays are 5 pm until 9 pm, which is after usual business hours of the surrounding spaces. Weekends would include morning and daytime hours of operation (9 am-2pm).

Employees: 8 part-time employees total. No more than 2 employees at the facility at a time.

Project Narrative:

The proposed project will convert existing office/warehouse space into a dance training facility. The existing space is mostly warehouse, with small office area in the front. The remodel will be minimal and consist of creating:

- One small studio space (for one-on-one instruction with one instructor and one dancer)
- One larger studio space (for classes of sizes 5-20 at max)
- Bathrooms up to code as far as capacity and accessibility
- A small room for dancers to put their belongings
- Two closet spaces for storage

DESCRIPTION OF PROPOSED USE

Applicant, The Vibe Dance and Fitness, LLC (“Applicant”) proposes to establish at 12975 16th Avenue North a boutique training facility for dancers, focusing on one-on-one and small group training (the “Business”). The Applicant is seeking a conditional use permit.

The Business proposes to occupy 4,848 square feet, which will include office space, a small studio for individual instructions, a larger studio for group instruction, a storage space for student belongings and two small storage spaces for Business use. In addition, there would be a handicapped compliant bathroom. Attached with the application is a depiction of the current uses and the space available for the Business. Also attached is a space fit plan showing the intended layout of the Business space.

The Business complies with the standards for obtaining a conditional use permit in the following manner:

1. The Business currently is allowed as a conditional use in the I-2 Zoning District. Plymouth’s 2040 Comprehensive Plan anticipates no changes to the zoning character of the district, so the Business will be consistent with expected future uses. Further, the existing building was constructed in 1989 so it is fairly new and not likely to be subject to redevelopment in the near future. The Business, therefore, both complies with the Comprehensive Plan and will have no adverse effect on the Plan.

2. The Business will not be detrimental to or endanger the public health, safety, morals or comfort of the community. The Business neither uses nor produces hazardous materials nor creates any waste products or other materials that would need to be disposed of other than regular office trash. The Business operation in no way creates risk either for surrounding businesses or the general public. The Business promotes and enhances the general public welfare by providing physical training to young people in a safe environment and diversifies the types of businesses found in the community.

3. The operation of the Business will not be injurious to the use and enjoyment of the property by its neighboring businesses. The likely hours of operation will be late afternoon/evening and weekends, causing no interference with the typical Monday through Friday operation of most businesses. Of particular significance, the hours of operation will mean no traffic or parking issues. As noted above, nothing about the Business operation will create hazardous materials or dangerous conditions that would impair the property values of the area.

4. The Business would be located in a fully developed commercial and industrial area and would be within a fairly new building not likely to be redeveloped in the near future. Nothing about the operation of the Business would harm the building or the real estate or otherwise impair any potential future development.

5. The building in which the Business would be located has a mutual easement agreement with the property to the immediate west (a copy of which is attached hereto) that provides for ingress and egress as well as parking. The 12975 building has approximately 51 of its own parking spaces (including 2 handicapped spaces) and 25 additional parking spaces (including another handicapped space) pursuant to the easement.

The Business would use all of the remaining open space in the building. The existing uses include:

1. The offices and warehouse of a medical device company (Laplace Interventional, Inc.) which has approximately five (5) employees using 5,000 square feet, 2,800 of which are warehouse;

2. The offices of a school fundraising company (Fun2Raise Marketing and Events, Inc.), which has approximately 1,700 square feet and approximately five employees working out of those offices;

3. The offices and warehouse for NaturaLawn of America, a lawncare service, utilizing about 3,000 square feet for its offices and 5,200 square feet for its warehouse. NaturaLawn is a seasonal operation, so its field workers are on a four-day workweek schedule during the spring, summer and fall. Each of those days, the workers come to the property to pick up a company vehicle and materials needed for that day. Those workers park their personal vehicles on the site while they are using the

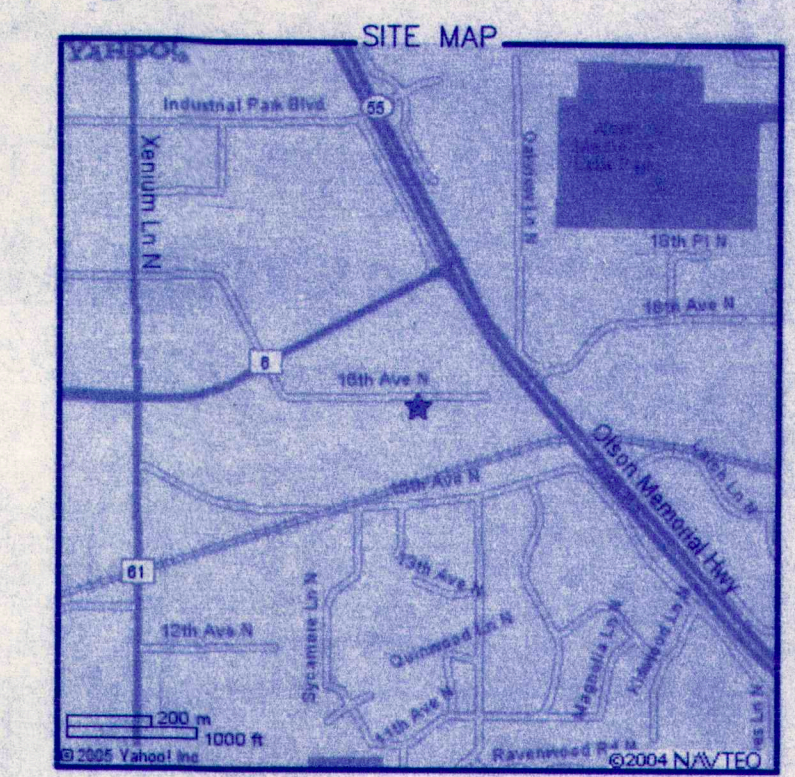
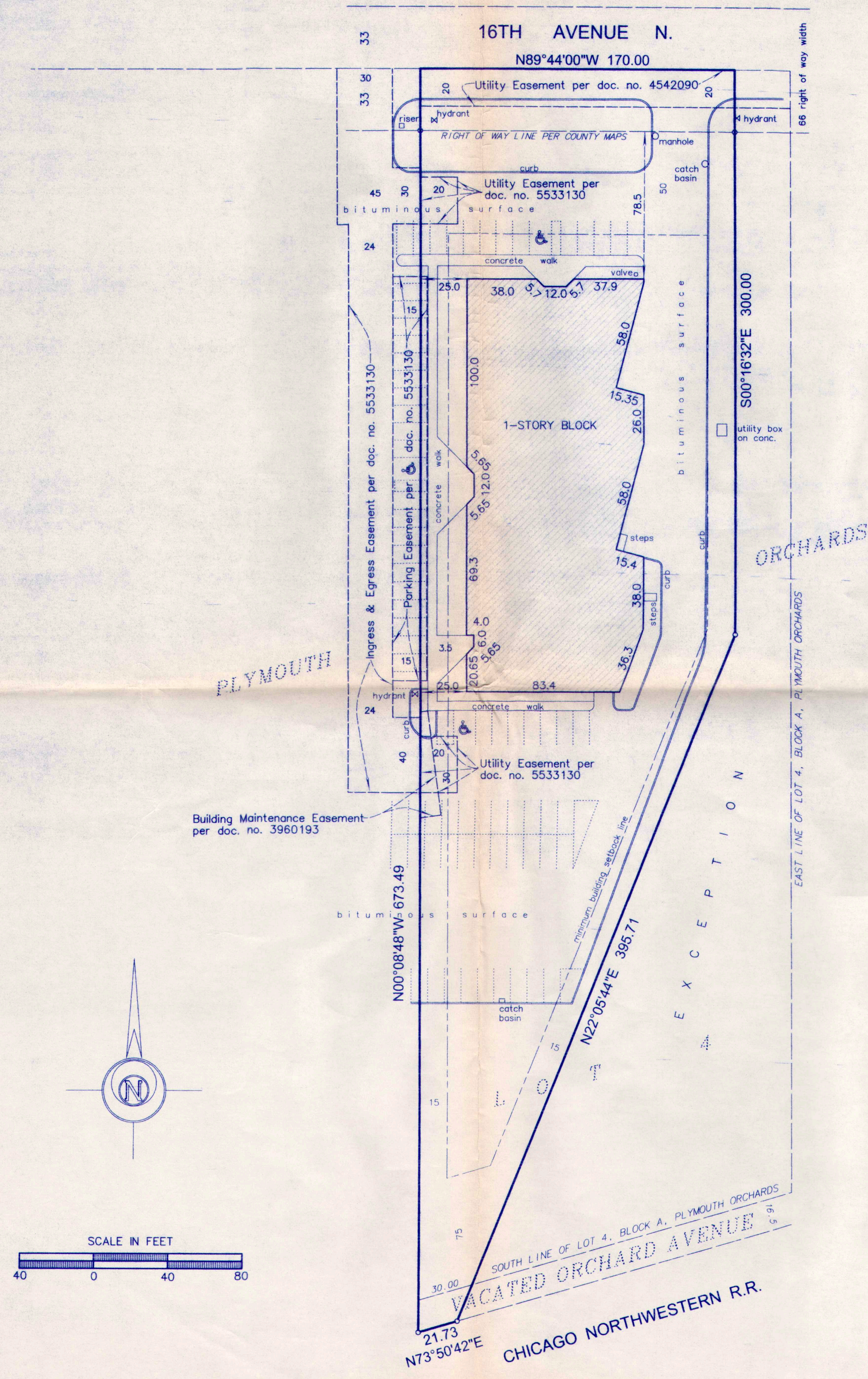
company vehicle and then pick them up at the end of the day and park the company vehicles. There are approximately 15-20 employees parking at the site each day.

The Business, by virtue of its square footage, would require no more than 17 parking spaces per the Plymouth city code. The maximum number of students for any class would be twenty(20). Because there is no opportunity for a person to observe the classes, and because many of the students are too young to drive, most students are picked up and dropped off without anyone parking. There are likely to be no more than two instructors working at any one time. It is highly unlikely the Business would use 17 spaces, and as noted above, its hours of operation are likely to be primarily “off peak,” further minimizing any impact on parking or traffic.

Attached are photographs showing views of parking on the north side, where Laplace is located, the east side, where the Business would be located and the south side, where NaturaLawn is located.

6. The Business shall conform to all other regulations applied to businesses in the I-2 zoning district.

7. It is the Applicant’s understanding that the building and its current operation meet the General Performance Standards set forth in Section 21015.04 of the Plymouth Zoning Code. Most of those standards are applicable to the building itself, but to the extent the standards apply specifically to the Business – including but not limited to parking and traffic – the Business shall be in compliance with those standards.



Property address: 12975 16th Avenue N, Plymouth, MN

Area of parcel is 86346.6 sq.ft (1.982 acres) - area includes road right of way

Area of building as measured at ground level is 19852 sq.ft

Property Zoned I-2 General Industrial

Building setback lines shown per city of Plymouth zoning ordinance.

- Setback requirements per city ordinance
- Front - 50 feet (from right of way)
 - Side - 15 feet
 - Rear - 75 feet (abuts residential)

According to the city of Plymouth the property is in Flood Zone "X" per F.E.M.A. map number 27053C0327E, dated September 2, 2004.

Legal description and easements per title commitment from Land Title, Inc., Case No. 253176, dated May 1, 2005.

Legal Description:

Lot 4, Block A, Plymouth Orchards, Hennepin County, Minnesota, except that part thereof described as follows: Beginning at a point on the South line of said Lot 4, which point lies 30 feet distant Northeastly from the Southwest corner of said Lot 4, and measured along the South line of said Lot 4; thence in a Northeastly direction along the South line of said Lot 4 a distance of 179.44 feet to the Southeast corner of said Lot 4; thence North along the East line of said Lot 4 a distance of 597.12 feet to the Northeast corner of said Lot 4; thence West along the North line of said Lot 4 a distance of 30 feet to a point; thence South parallel with and 30 feet Westerly from said Easterly line of said Lot 4 a distance of 300.0 feet to a point; thence in a Southwesterly direction a distance of 350.0 feet, more or less, to the point beginning. Together with that part of the North 1/2 of vacated Orchard Avenue lying between the Southerly extensions of the Westerly and Southeasterly lines of the above described property.

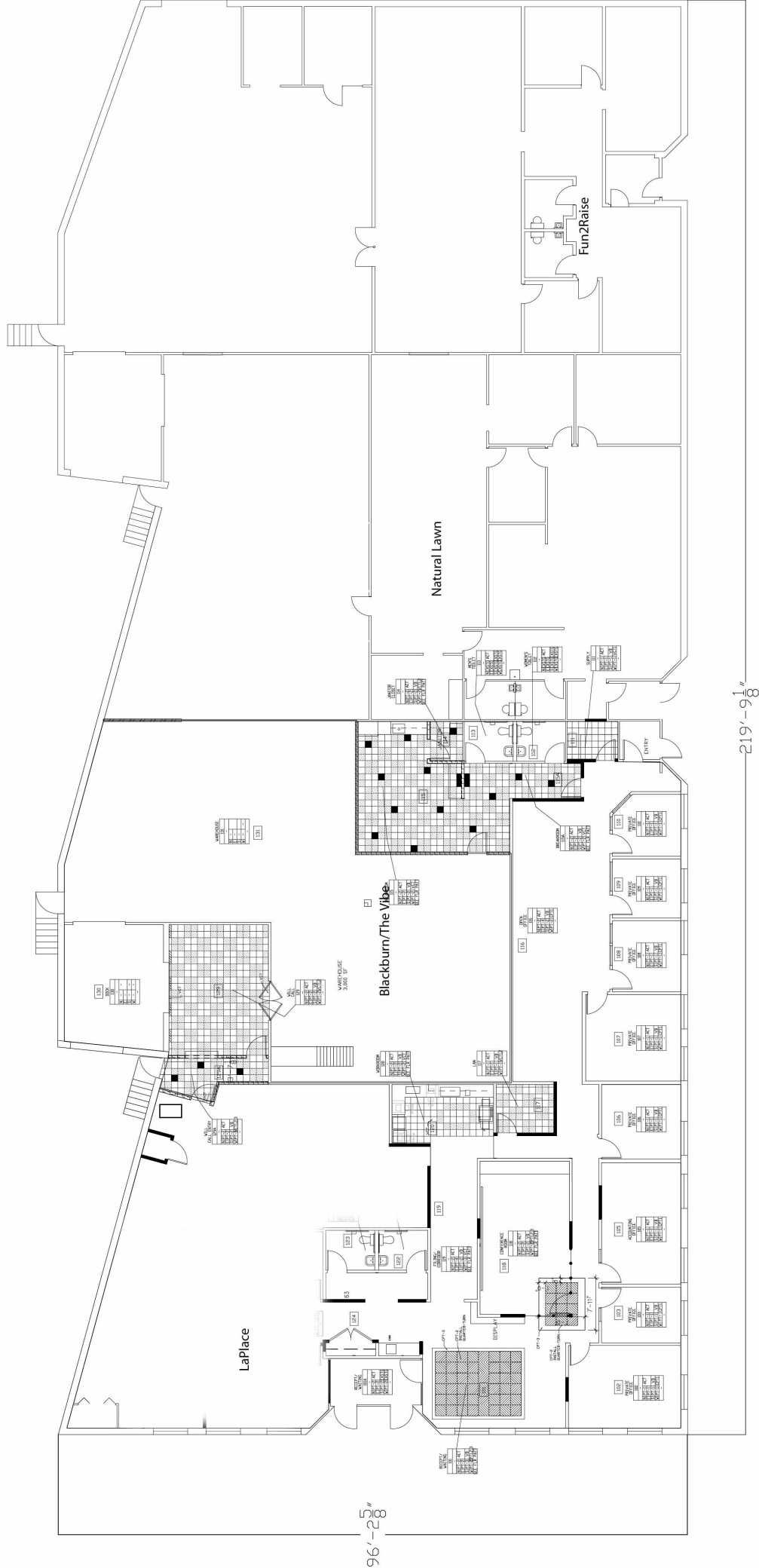
To Central Bank and Land Title, Inc. dba Chicago Title Insurance Company

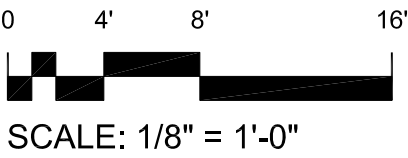
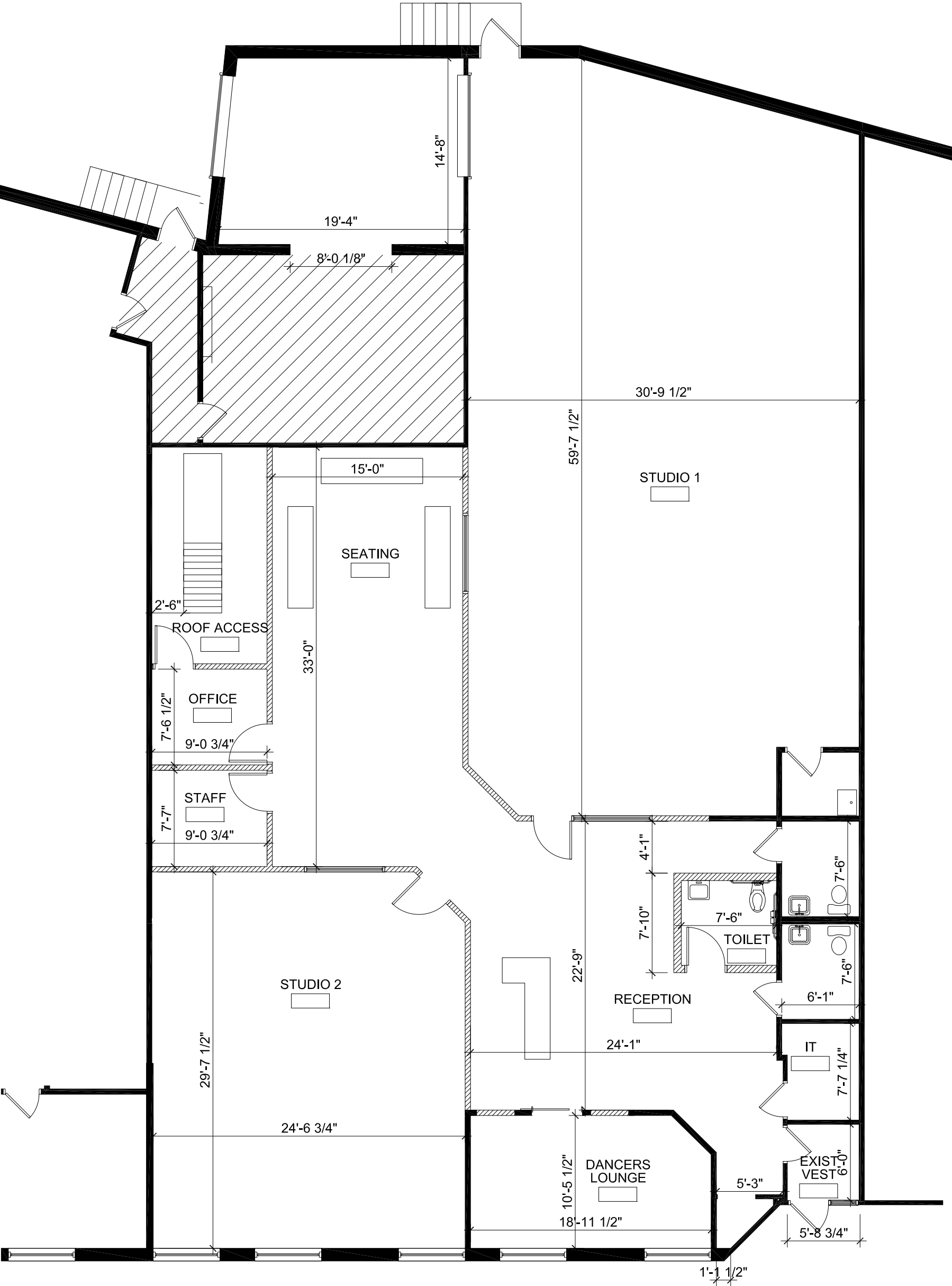
This is to certify that this map or plat and the survey on which it is has been based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 1999. Pursuant to the Accuracy Standards as adopted by ALTA, NSPS and ACSM and in effect on the date of this certification, undersigned further certifies that the survey measurements were made with proper field procedures, instrumentation, and adequate survey personnel were employed in order to achieve results comparable to those outlined in the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA / ACSM Land Title Surveys."

Dated February 3rd, 2003.

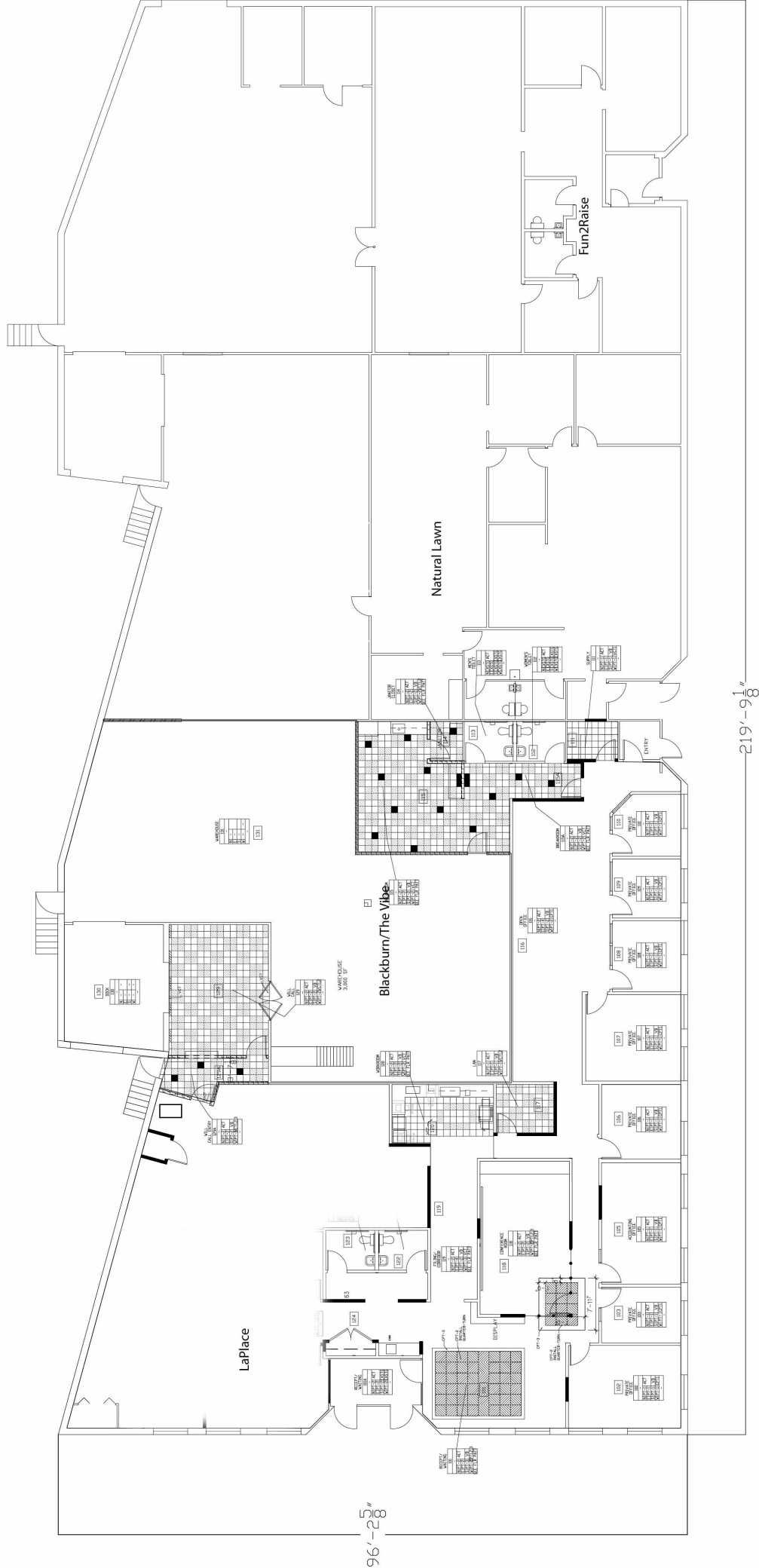
Signed:
Charles F. Anderson, Minn. Reg. No. 21753

ORIGINAL DATE: 5-25-03	PREPARED BY: LOT SURVEYS COMPANY, INC. LAND SURVEYORS	ALTA / ACSM LAND TITLE SURVEY for ROB ALEXANDER
DESIGNED BY:	7601 73RD AVE. NO. BROOKLYN PARK, MN 55428	C/O Select Communications 3750 Annapolis Lane Suite No. 115 Plymouth, MN 55447
DRAWN BY:	Ph. (763) 560-3093	
CHECKED BY: C. A.	Fx. (763) 560-3522	
REVISIONS: 6-13-05 title block		
COMP. FILE: Po4-Ainv71750.scj	F.B. No. 466-51	INV. NO. 71750





VIBE DANCE & FITNESS
PROPOSED PLYMOUTH, MN LOCATION
OPTION A
5/2022 - NOT FOR CONSTRUCTION
© IOA, Inc.



5533130

CROSS-EASEMENT AGREEMENT

THIS AGREEMENT, made this 4th day of MAY, 1989, by and between SPECK Properties, a Minnesota general partnership (hereinafter SPECK) and JAMES PROVIZINO & KATE PROVIZINO (hereinafter).

WHEREAS, SPECK is the owner of a certain parcel of real estate located in the City of Plymouth, Hennepin County, Minnesota, described on Exhibit "A" hereto (Parcel "A") and

WHEREAS, JAMES & KATE PROVIZINO is the owner of a certain parcel of real estate located in the City of Plymouth, Hennepin County, Minnesota, described on Exhibit "B" hereto (Parcel B); and

WHEREAS, the parties desire to utilize Parcels A and B as complementary office/warehouse developments; and

WHEREAS, the parties desire to provide certain easements for vehicular and pedestrian ingress, egress, parking, passage and travel and for utilities over, upon, across and through the parcels above described as hereinafter provided.

NOW THEREFORE, in consideration of One Dollar (\$1.00), the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. SPECK hereby grants to JAMES & KATE PROVIZINO, its heirs, successors and assigns, and to any person who shall from time-to-time be entitled to the use and occupancy of office or commercial space located within Parcel B, and all employees, licensees and other business invitees of such occupants:

(a) A nonexclusive easement for ingress and egress over and upon that portion of Parcel A described on Exhibit C hereto (Parcel C) attached, and

(b) A nonexclusive easement for daily parking of personal automobiles of employees and business invitees of occupants of Parcel B, over and upon that portion of Parcel A described on Exhibit D hereto (Parcel D).

2. The parties hereto covenant that at all times there be free access between their respective parcels. No hedge, fence, wall or similar barrier will be constructed between the respective parcels.

3. James & Kate Provinzino hereby grants to SPECK, its heirs, successors and assigns, and to any person who shall from time-to-time be entitled to the use and occupancy of office or commercial space located within Parcel A, and all employees, licensees and other business invitees of such occupants:

(a) A nonexclusive easement for ingress and egress over and upon that portion of Parcel B described on Exhibit E hereto (Parcel E) attached.

4. James & Kate Provinzino hereby grants to SPECK, a nonexclusive easement to install, operate, maintain, repair and replace utility systems, lines, pipes, mains and other facilities for storm drainage upon Parcel B described on Exhibit F hereto (Parcel F), including the drainage of surface water from Parcel A to Parcel B, across that portion of Parcel B described on Exhibit F hereto (Parcel F).

5. When the utility facilities have been installed under paragraph 3 above, any party hereto shall have the right, upon thirty (30) days' prior written notice, at any time or from time-to-time, to move and relocate the utility facilities to such place as shall be designated by the owner of the parcel upon which such utility facilities had been installed, provided however, (1) that such relocation shall be made at the sole cost and expense of the party giving such notice; and (2) such relocation shall not interfere with, or increase, the cost of the other party's maintenance or utility services, or unreasonably interfere with the conduct, or operation, of the business of the owner of the parcel upon which such utility facilities are located, or of the business of the owner of the parcel served by such utility facilities.

6. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the dominant Parcel, and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions, and shall constitute covenants running with the land.

7. Each party shall pay on an equal basis the cost and expense of the maintenance and repair of Parcel C.

8. James & Kate Provinzino shall at its sole cost and expense maintain and repair Parcel D.

9. The parties shall share on an equal basis the cost of maintenance of the facilities for storm drainage.

10. In the event that any party shall fail to properly

maintain a Parcel as required herein, or pay for their proportionate share of the cost of maintaining the easements provided in Paragraphs 3 or 4 above (such party being herein referred to as the "Defaulting Party"), any other party (hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as "Deficiencies") in the Defaulting Party's performance of the maintenance to be performed by it. The Defaulting Party shall have ten (10) days after receipt of the said notice in which to correct the Deficiencies, or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten (10) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that the Defaulting Party shall fail or refuse for any reason to timely correct, or to begin to correct, the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay all costs, including costs of collection, to the Nondefaulting Party.

10. Each right, power and remedy herein conferred, is cumulative and in addition to every right, power or remedy available to a party at law or in equity.

11. This agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

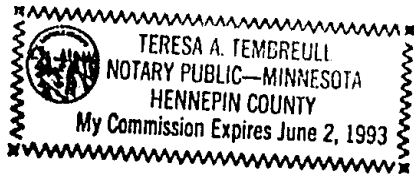
SPECK Properties, a Minnesota
general partnership

By Sam Sakal
Its General Partner

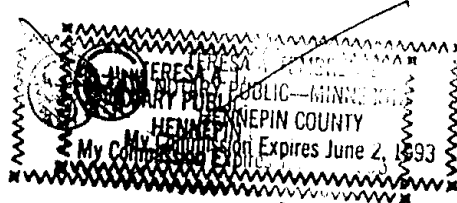
James P. Padden Jr.
Kate Prohaska

STATE OF MINNESOTA)
COUNTY OF Hennepin) ss.

The foregoing instrument was acknowledged before me this
12th day of April, 1988, by Tary Kachach
a partner of SPECK Properties, a Minnesota general
partnership.



Teresa A. Tembreull
Notary Public



STATE OF MINNESOTA)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this
12th day of April, 1988, by
James Provinzino and Kate Provinzino Husband
and wife

James T. Toziuski
Notary Public

My Commission expires 3-10-1995
Notary Hennepin County, MN

Drafted by
James O'Brien
2525 Nevada Ave No
Golden Valley MN
55427

1988
AND PRIOR TAXES PAID
DEPT. OF PROPERTY TAX & PUBLIC RECORDS
TRANSFER ENTERED

MAY 11 1989

Willie J. [Signature]
HENNEPIN COUNTY CLERK
DEPUTY

EXHIBIT A

Lot 5, Block A, "Plymouth Orchards, Hennepin Co., Minnesota and the northeasterly one-half (1/2) of vacated 15 1/2 Avenue North (formerly Highland Avenue) accruing to Lot 5, Block A, "Plymouth Orchards, Hennepin Co., Minnesota by reason of the vacation thereof.

EXHIBIT B

Lot 4, Block "A", "Plymouth Orchards, Hennepin County, Minnesota" except that part thereof described as follows: Beginning at a point on the South line of said Lot 4, which point lies 30 feet distant Northeasterly from the Southwest corner of said Lot 4, and measured along the South line of said Lot 4; thence in a Northeasterly direction along the South line of said Lot 4 a distance of 179.44 feet to the Southeast corner of said Lot 4; thence North along the East line of said Lot 4 a distance of 597.12 feet to the Northeast corner of said Lot 4; thence West along the North line of said Lot 4 a distance of 30 feet to a point; thence South parallel with and 30 feet Westerly from the said Easterly line of said Lot 4 a distance of 300.0 feet to a point; thence in a Southwesterly direction a distance of 350.0 feet, more or less, to the point of beginning, together with that part of the North $\frac{1}{4}$ of vacated Orchard Avenue lying between the Southerly extensions of the Westerly and Southeasterly lines of the above described property.

Together with the vacated Orchard Avenue lying easterly of the southerly extension of the west line of said Lot 4 and a line 30.00 feet easterly of and parallel with the southerly extension of the west line of said Lot 4

EXHIBIT C

1. The south 50.00 feet of the north 83.00 feet of the west 30.00 feet of the east 45.00 feet of Lot 5.
2. The south 303.00 feet of the north 386.00 feet of the west 24.00 feet of the east 39.00 feet of Lot 5.
3. The south 30.00 feet of the north 83.00 feet of the east 15.00 feet of Lot 5.
4. The south 40.00 feet of the north 386.00 feet of the east 15.00 feet of Lot 5.

All in Block A, PLYMOUTH ORCHARDS, Hennepin County, Minnesota.

EXHIBIT D

The south 215.00 feet of the north 326.00 feet of the east 15.00 feet of Lot 5, Block A, PLYMOUTH ORCHARDS, Hennepin County, Minnesota.

EXHIBIT E

The south 215.00 feet of the north 326.00 feet of the west 3.50 feet of Lot 4, Block A, PLYMOUTH ORCHARDS, Hennepin County, Minnesota.

EXHIBIT F

The south 30.00 feet of the north 386.00 feet of the west 20.00 feet of Lot 4.

The South 25.00 feet of the north 83.00 feet of the west 20.00 feet of Lot 4.

All in Block A, PLYMOUTH ORCHARDS, Hennepin County, Minnesota.

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OFFICE OF COUNTY RECORDER
LEWIS & CLARK COUNTY, MINNESOTA

CERTIFIED FILED AND OR
RECORDED ON

89 MAY 11 AM 10:50

5533130

AS DOCUMENT #

H. Dan Carlson CO. RECORDER

BY *AK* DEPUTY

REC FEE

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BT 352







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