

**PLANNING COMMISSION REPORT
REGULAR AGENDA -- PUBLIC HEARING ON VARIANCE AND WAIVER REQUESTS ONLY**

PC Staff Report
12/15/08

ITEM NO. 3C: VARIANCE & WAIVER FOR MAPLE LEAF SQUARE ADDITION (MKM)

Maple Leaf Square Addition; a 10.24 acre, 41 lot subdivision which is a replat of Lots 1 through 29 in Block One, Lots 1 through 12 in Block two and Tracts A and B in Doolittle Subdivision; located north of Overland Drive between Monterey Way and Eldridge St. A waiver is being requested from the requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations that sidewalks be constructed on both sides of the street and a variance is being requested from Section 20-810(d)(2)(iii) which prohibits the approval of subdivisions with more than 35 lots or potential dwelling units which have outlet to the public road system via a single outlet to the arterial and collector street system.

ITEM NO. 3D: PRELIMINARY PLAT FOR MAPLE LEAF SQUARE; 4145 SEELE WAY (MKM)

PP-10-13-08: Preliminary Plat for Maple Leaf Square, a 10.24 acre subdivision consisting of 41 lots, located at 4145 Seele Way. Submitted by Landplan Engineering PA, for Doolittle Farms LLC, property owner of record.

ITEM NO. 3C STAFF RECOMMENDATION:

- 1) Staff recommends denial of the variance requested from Section 20-810(d)(2)(iii) which requires any subdivision in which more than 35 residential lots or potential residential dwelling units are proposed to have access to the public road system via more than one outlet to the street system.
- 2) Staff recommends denial of the waiver requested from Section 20-811(c)(1)(i) which requires that sidewalks be installed on both sides of all streets.

ITEM NO. 3D STAFF RECOMMENDATION:

Staff recommends denial of the Preliminary Plat of Maple Leaf Square.

If the Planning Commission would decide to approve the Preliminary Plat, Staff recommends that the following conditions be applied:

- 1) Provision of a revised preliminary plat with the following changes:
 - a) Provision of a note on the preliminary plat that states that the applicant will submit public improvement plans showing the manholes being raised to final grade and the relocation of any fire hydrants, valves, or other water appurtenances so they are located on, or immediately adjacent to, the side lot lines.
 - b) Extension of the sewer main serving the duplex on the western side of Lot 1, Block One to avoid a private service line crossing the future lot split line.

- c) General Notes 16, 17 and 18 should be revised to clearly indicate who is responsible for maintaining the drainage easements. If it is to be the property owners rather than the homeowner's association, the property owners should be specified or the lots should be listed for clarity and Notes 17 and 18 should be revised to clearly state what portions of the tracts the homeowner's association will maintain.
- d) Clarification of the use of the fire access lane. If it is intended to serve as a pedestrian and bike pathway, this should be noted on the plan and the area which is to be surfaced should be marked.
- e) Revision of General Note 22 to read: "Per the City Fire Code, construction of the emergency access drive and associated features is required for 30 dwelling units and will occur prior to the construction of a 30th dwelling unit."

Applicant's Reason for Request: The property is zoned for residential development and has an approved plat on file, Doolittle Subdivision. The applicant is requesting rezoning to zoning districts which permit denser residential development and has submitted this plat to accommodate the lot requirements in the revised zoning districts, RS5 and RM12D.

KEY POINTS

- The property was platted in 2006 as the Doolittle Subdivision which contained 41 single family lots. This plat also proposes 41 lots, but increasing the number of dwelling units from 41 to 63. Streets have been constructed and sanitary sewer and water lines have been extended through the property.
- The lot reconfiguration proposed with the Maple Leaf Square plat necessitates changes to the public improvements.
- The Doolittle Subdivision was approved under the 1981 Subdivision Regulations and the Maple Leaf Square plat is being reviewed under the 2006 Subdivision Regulations.
- The necessary right-of-way has been dedicated with the Doolittle Plat; therefore, no additional right-of-way is being dedicated with this plat.
- A variance and waiver have been requested with this plat and are considered in this report, after the general discussion of the plat.

SUBDIVISION CITATIONS TO CONSIDER

- This application is being reviewed under the Subdivision Regulations for Lawrence and Unincorporated Douglas County, effective Dec. 31, 2006.
- A variance is being requested from the requirement in Section 20-810(d)(2)(iii) that no subdivision be approved which proposes more than 35 potential dwelling units which will have access to the public road system via a single outlet.
- A waiver is being requested from the requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations that public sidewalks shall be installed on both sides of all streets.

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Planning Commission action on the requested variance; being considered at the December meeting.
- Planning Commission recommendation on the requested waiver to be forwarded to the City Commission; also being considered at the December meeting.
- City Commission action on the requested waiver.

- Submittal of the preliminary plat to the City Commission for acceptance of dedication of easements.
- Submission of and administrative approval of a final plat.
- Recordation of the final plat with the Douglas County Register of Deeds.
- Consideration of the following rezoning requests at the December meeting and forwarding to the City Commission with a recommendation:
 - Consideration of rezoning request Z-10-17A-08 for 6.17 acres from RS7 (Single-Dwelling Residential) to RM12D (Multi-Dwelling Residential/Duplex) District.
 - Consideration of rezoning request Z-10-17B-08 for 3.57 acres from RS7 (Single-Dwelling Residential) to RS5 (Single-Dwelling Residential) Districts.
- Submittal of Public Improvement Plans for the necessary revisions to the infrastructure.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- A letter from Jason Pendleton which expressed his opposition to the rezoning to permit duplexes and more dense single-family development.
- E-mail from Doug Flessing expressing his opposition to the duplex rezoning and the requested variance, based on concerns with increased traffic congestion in the area. Both property owners expressed concern that the duplex zoning would devalue property values in the area.
- A letter from Larry Sherraden, President Lawrence Bible Fellowship expressing opposition to the rezoning to the RM12D District based on concern with the change in the general composition of the neighborhood. He also expressed concerns with the drainage easement and the maintenance of the property.

GENERAL INFORMATION

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|----------------------------------|---|
| Current Zoning and Land Use: | RS7 (Single-Dwelling Residential) District; undeveloped property with streets and infrastructure in place. |
| Surrounding Zoning and Land Use: | To the west, north and east: RS7 (Single-Dwelling Residential) District; residential development to the west and north, and a church to the east. To the south: PCD (Monterey Center-Planned Commercial) District; townhome development. |

SITE SUMMARY

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|------------------------|--|
| Number of Lots: | 41 |
| Gross Area | 10.24 acres (446,220 sq. ft.) |
| Number of Tracts: | 2, total of 1.08 acre (47,131 sq. ft.) |
| Rights-of-way: | 2.29 acre (99,957 sq. ft.) |
| Lot Areas: | |
| Proposed RS5 Zoning: | |
| Minimum | 5,330 sq. ft. |
| Maximum | 7,705 sq. ft. |
| Proposed RM12D Zoning: | |

STAFF REVIEW

Property surrounding the subject property developed earlier than the subject property. The property to the west, north and south was platted in 1989 as Monterey Subdivision No. 1. The properties to the east were platted in 1983 and 1994. The subject property was relatively land-locked as a result of the surrounding development. (Figure 1)

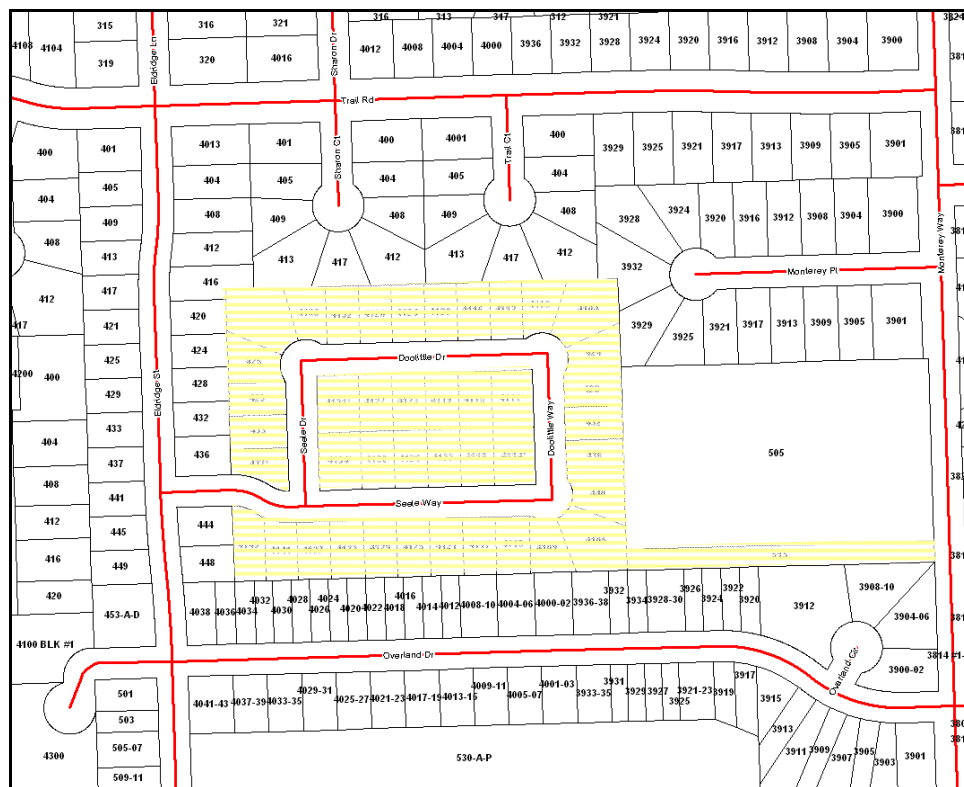


Figure 1. Subject property and surrounding road network.

Zoning and Land Use

Rezoning requests to the RS5 (Single-Dwelling Residential) and RM12D (Multi-Dwelling Residential/Duplex) Zoning Districts have been submitted in conjunction with this preliminary plat. The proposed lots meet the minimum lot area and lot width requirements of the RS5 and RM12D Districts (5,000 sq. ft. and 40 ft for the RS5 District and 6000 sq. ft. and 60 ft for the RM12D District). The zoning and land use would remain residential, but the density permitted with the zoning districts would increase from a maximum density of 6.2 dwelling units per acre with the RS7 Zoning to a maximum density of 8.7 dwelling units per acre for the RS5 Zoning

and a maximum density of 12 units per acre for the RM12D Zoning. The actual density of the property as platted as the Doolittle Addition was 5.7 dwelling units per acre and the actual density being proposed with the RS5 Zoning is 5.3 dwelling units per acre and with the RM12D Zoning is 7.16 units per acre.

Streets and Access

The property has been developed with internal streets which connect at one location to Eldridge Street to the west. When platted in 2006 as the Doolittle Subdivision, the property contained lots for 41 single-dwelling residences. The Maple Leaf Square plat proposes 41 lots with 19 as single-dwellings and 22 duplex dwellings resulting in 63 potential dwelling units in this development. Section 20-810(d) of the Subdivision Regulations contains design standards for streets.

Section 20-810(d)(2)(iii) states that no new subdivision shall be approved in which more than 35 residential lots or potential residential dwelling units will have access to the public road system via a single outlet to the arterial and collector street system. The plat provides inadequate access to the collector/arterial street system. The only option for additional access would be to construct a limited access street in the narrow strip which extends to the east to connect to Monterey Way. A fire lane is proposed in this area. The strip had been used as the driveway to the farmstead prior to annexation of the property and was dedicated as a drainage easement with the Doolittle plat. A street in this area would not be compatible with the adjacent development.

General Note No. 22 states that the fire access will be installed after the construction of a 36th dwelling unit. The Subdivision Regulations require a second access for properties with more than 35 dwelling units; however, the City Fire Code requires a second fire access for properties with 30 or more dwelling units. Note No. 22 must be revised to reference the requirements of the Fire Code and to state that the fire access will be constructed prior to the construction of the 30th dwelling unit.

Utilities and Infrastructure

Sanitary sewer lines and water lines were installed for the Doolittle Subdivision. The reconfiguration of lot lines will require adjustments in the existing infrastructure. The City Utility Engineer indicated that the fire hydrants, valves and any other water appurtenances not on or immediately adjacent to side yard lot lines will need to be relocated. Public improvement plans will be required for these changes. Driveway access restrictions had been suggested as a means for addressing this situation, but this was determined to be an unacceptable solution. There are manholes on the property which need to be raised to final grade. A note should be placed on the plat, if it is approved, indicating that these issues will be addressed on the public improvement plans. City Code states that duplexes are two distinct residential dwelling units and thus require two separate private sanitary sewer service lines that both directly connect to the City's main. [City Code 19-214(C)]. City Code 19-214(A) states that each lot shall have direct access to the main and this access must not cross property ownership lines. The duplex on Lot 1, Block One will result in a private service line for the east side crossing the future lot split line to tap into the main on the west side of the lot. The sewer main must be extended so it would not cross future lot lines. This extension shall be added to the preliminary plat if it is approved.

Easements and Rights-of-way

The streets have been installed and no additional right-of-way is being dedicated with this plat. Tract A and a portion of Tract C are being dedicated as drainage easements. The ownership and maintenance responsibility of the drainage easement should be clearly defined on the plat. Note 16 states that adjacent property owners will be required to maintain the drainage easement and Notes 17 and 18 states that the Homeowner's Association will maintain all tracts. The notes should be revised to clearly indicate who is responsible for maintaining the drainage easements. If it is to be the adjacent property owners, the lots should be listed for clarity. Tract B and a portion of Tract C are being dedicated as access easement. 15 ft utility easements are being provided along the perimeter of the interior street and along the rear of the lots in the interior block.

VARIANCE

The property owner is requesting a variance from Section 20-810(d)(2)(iii) which states that no new subdivision shall be approved in which more than 35 residential lots or potential residential dwelling units will have access to the public road system via a single outlet to the arterial and collector street system.

The applicant provided a letter requesting the variance, which is included as Attachment A with this report. In the letter the applicant included an 'appeal' of the determination that a variance is not necessary. Section 20-1310 of the Development Code contains the procedure for obtaining and appealing a written interpretation. If the applicant wishes to pursue the appeal process it would be necessary to submit an application for a written interpretation from the Planning Director. Appeals of the written interpretation may be taken to the Board of Zoning Appeals in accordance with the procedures of Section 20-1311. Section 20-1311 of the Development Code contains the provisions for appeals of an administrative decision. These are also considered by the Board of Zoning Appeals. As the Planning Commission does not have the authority to grant appeals of written interpretations or administrative decisions Staff has informed the applicant of the proper channels for the filing of an appeal and would recommend that the Planning Commission disregard the appeal request.

Section 20-813(g) states that the Planning Commission may grant a variance from the design standards of these regulations with the exception of the standards of the wastewater disposal system standards only if the following three criteria are met: that the strict application of these regulations will create an unnecessary hardship upon the Subdivider, that the proposed variance is in harmony with the intended purpose of these regulations and that the public health, safety and welfare will be protected. Below is a review of the variance request in relation to these criteria.

Criteria 1: Strict application of these regulations will create an unnecessary hardship upon the Subdivider.

Applicant's Response:

"Additional right-of-way for a second public street does not exist and is not obtainable. A 40 ft strip of property owned by the applicant does exist as a corridor for the proposed private drive and second [emergency] access to the subject development. The subdivision as presently platted contains no second access, yet in its current state Doolittle Subdivision exceeds the current 35-unit maximum by 6 units.

Today, no market exists to warrant construction of homes in the existing Doolittle Subdivisions; with all streets and infrastructure installed in 2006, not one homesite has been erected. The Maple Leaf Square revised plat and rezoning applications will facilitate construction of smaller, less expensive single-family dwellings serving a market and demographic presently underserved in Lawrence.

Strict application of the regulation will render the proposed innovation, or any similar in-fill project on this site, impossible."

Staff Review:

Unnecessary hardship is defined in Section 20-815(b) of the Subdivision Regulations as:

"The condition resulting from application of these regulations when viewing the property in its environment that is so unreasonable as to become an arbitrary and capricious interference with the basic right of private property ownership, or convincing proof exists that it is impossible to use the property for a conforming use, or sufficient factors exist to constitute a hardship that would in effect deprive the owner of their property without compensation. Mere financial loss or the loss of a potential financial advantage does not constitute unnecessary hardship."

Per Section 20-810(d)(2)(iii), the lack of additional right-of-way for the installation of a second access to the street system limits the number of dwelling units which may be constructed on the property. If the applicant feels that smaller lots or duplex lots would be more marketable it would be possible to rezone the property to allow smaller lots or duplex residences while conditioning the zoning to place a limit on the number of total dwelling units permitted in the development. The remaining land could be used as open space. While this would not result in additional dwelling units for sale, it may result in the same number of dwelling units in a more marketable configuration.

The applicant pointed out that the Doolittle Subdivision with 41 single-dwelling lots currently exceeds the 35 lots or potential dwelling units permitted by the Subdivision Regulations. The Doolittle Subdivision was submitted prior to the adoption of the 2006 Development Code and was reviewed with the 1966 Zoning Ordinance. This provision was established with the adoption of the Development Code.

In Staff's opinion, the strict application of these regulations does not create an unnecessary hardship upon the Subdivider.

Criteria 2: The proposed variance is in harmony with the intended purpose of these regulations.

Applicant's Response:

"The secondary emergency access fulfills the purpose of the code, which reads, "No new subdivision shall be approved in which more than 35 residential lots or potential residential dwelling units, or more than 25,000 square feet of nonresidential space will have access to the public road system via a single outlet to the arterial and collector street system as shown on the adopted Major Thoroughfares Plan."

The proposed access drive provides such an access, and, as importantly, satisfies Lawrence Emergency Services' [and International Fire Code] intent for alternative access into a subdivision."

Staff Review:

The City Fire Code is intended to provide access for emergency vehicles into the site and the fire access proposed in Tract B and C fulfill the requirements of the City Fire Code. However, the Subdivision Regulations are intended to provide for the harmonious and orderly development of land within the City and the unincorporated area of Douglas County by making provisions for adequate open space, continuity of the transportation network, recreation areas, drainage, utilities and related easements, light and air, and other public needs and to contribute to conditions conducive to health, safety, aesthetics, convenience, prosperity and efficiency.[Section 20-801(a)(1)(i)and(ii)] The Code Section under discussion, 20-810(d)(2)(ii) is part of Section 20-810(d) *Streets* and 20-810(d)(2) which is labeled *Connections*. It is obvious from the arrangement of the regulations that the requirement is referring to Street Connections and not simply fire or emergency access.

Limiting the number of dwelling units which may have access to the road system via one outlet is intended to improve the traffic circulation in the vicinity of the site. In Staff's opinion, the proposed variance is not in harmony with the intended purpose of these regulations.

Criteria 3: The public health, safety and welfare will be protected.

Applicant's Response:

"As described above, a second avenue is proposed to the subdivision, accessible to emergency vehicles. In the extraordinarily rare case that one access may become inaccessible, another will become available with the approval of this variance.

Comparing the proposed subdivision to the existing plat, the Maple Leaf Square traffic study and companion information indicates an increase of only one (1) additional a.m. peak-hour trip, and only three (3) additional p.m. peak-hours trips. Given the fact that the existing neighborhood currently has only one access, provision of the proposed second access [with a negligible increase in vehicular trips] will clearly make the neighborhood healthier, safer and the public welfare will be increased. Further-more the second accessway will provide a second pedestrian [and cycling] thoroughfare to the neighborhood, as well."

Staff Review:

The Doolittle Subdivision was submitted prior to the adoption of the 2006 Subdivision Regulations and was approved under the requirements of the 1966 Zoning Ordinance. If the Doolittle Subdivision had been submitted after the adoption of the 2006 Subdivision Regulations, it would not have conformed to the street connection requirement in Section 20-810(d)(2)(iii) and Staff's recommendation would have likely been for denial. The regulations require additional access to the surrounding street network when more than 35 dwelling units are proposed in order to provide adequate traffic circulation for the site. Approval of the variance would allow an additional 22 dwelling units to be located in this subdivision with only the one existing outlet to the street network. Provision of the fire access to Monterey Way would protect the health in providing access to emergency vehicles; however, the fire access

would not alleviate congestion or improve traffic circulation for the residents of the development and the general public.

The proposal is to increase the number of dwelling units from 41 to 63, over a 50% increase from that approved with the previous plat, without an additional access to the street system. In Staff's opinion this may have a negative impact on the public safety and general welfare. The Traffic Impact Study (TIS) submitted by the applicant indicates 440 trips would be generated by the proposed development on an average weekday with 35 trips in the a.m. peak hour and 43 trips in the p.m. peak hour. This represents an increase of 47 trips per day, 3 additional trips in the a.m. peak hour and 1 additional trip in the p.m. peak hour from the existing approved subdivision. Duplexes are not a listed use in the trip generation book used for the TIS. The applicant used the 'residential condominium townhome' trip generation for the duplexes rather than the traffic generated by a 'single dwelling' residence. In Staff's opinion the trip generation for duplexes would be more similar to that of single-dwelling residences rather than townhome condominiums as duplexes are often components of 'affordable housing' in Lawrence and function as single-dwelling residences. If the trip generation for single-dwelling residences were used for the proposed duplex units as well as the single-dwelling residences, the traffic generated would increase to 603 trips per day, with 49 trips per peak a.m. hour and 64 trips per peak p.m. hour; (an increase of 210 trips per day, 17 trips in the a.m. peak hour and 22 additional trips in the p.m. peak hour from the approved subdivision).

(The applicant indicated in his response that a pedestrian and bicycle access is being provided in the emergency accessway to Monterey Way; however, the plan shows a 6 ft wide sidewalk being removed from this area. If this area is intended to function as a pedestrian and/or bike path, a sidewalk or a 10 ft wide bike/rec path would be required. It is not clear on the plan if the emergency access drive will be grass pavers or a paved surface. If the access is intended to serve as a pedestrian and bike pathway, this should be noted on the plan and the area which is to be surfaced should be marked.)

As the three criteria for a variance have not been met, Staff recommends denial of the variance request.

WAIVER

Per Section 20-811(c)(1)(iii) of the Subdivision Regulations, the applicant may request a waiver from the requirement to install sidewalks. The Planning Commission may make a recommendation on the waiver request, and the City Commission will make the final decision. The section provides the following guidance for determining if narrower sidewalks may be installed "In reviewing waiver requests from the standard sidewalk width, special consideration shall be given to walks adjacent to collector or arterial roads located in historic districts and areas with severe site topography which would make it impractical or difficult to build a sidewalk in accordance with the above standards." As there are no guidelines provided for the waiver from the requirement to install sidewalks, the impractical or difficult to build criteria should be met at a minimum.

Applicant's Request:

The applicant provided a letter requesting the waiver which is included with this staff report as Attachment B. In the letter the applicant states that the infrastructure was constructed when the Doolittle Subdivision was approved. The applicant states in the third paragraph of the letter, "Minimizing additional improvements to already existing infrastructure is paramount in making

the Maple Leaf Square concept work.” The applicant indicated that 1,376 feet of sidewalk would be required if the sidewalk were to be constructed on both sides of the street and this would serve only 10 duplex lots. The applicant states in the letter, ‘In conclusion, the benefit of adding the sidewalk would be relative quite low, would serve fewer than one-third of the residents, and would certainly be contrary to the Maple Leaf Square development concept. Without adding sidewalk per new Sec. 20-811, pedestrian access will remain abundant.”

Staff Review:

The Subdivision Regulations require sidewalks to be constructed on both sides of the street so that it is not necessary to cross the street to access a sidewalk. 10 duplex lots would have a total of 20 dwelling units, which is nearly 1/3 of the total number of dwelling units proposed. Duplex zoning permits a maximum of 4 unrelated adults per dwelling units; therefore, it is possible that up to 80 adults and their children could be affected by the lack of sidewalks in this area.

The plat shows 60 ft. of right-of-way existing for the streets within the development. The streets measure 27 ft. back to back of curbs and there is 33 ft of right-of-way remaining which is located on each side of the street. A 5 ft. wide sidewalk is shown on one side of the street's right of way approximately 6 ft. from the curb line. As an equivalent amount of right-of-way is provided on the other side of the street, a sidewalk would be able to be constructed without creating an unnecessary hardship on the applicant. The corners of the block are angled and it may be necessary to angle the lot lines for the corner lots to provide the required area for the sidewalk and the separation from the street. (Figure 2) The requested waiver fails to meet the ‘impractical or difficult to build’ criteria used for waivers allowing sidewalks to be constructed with less than the required width.

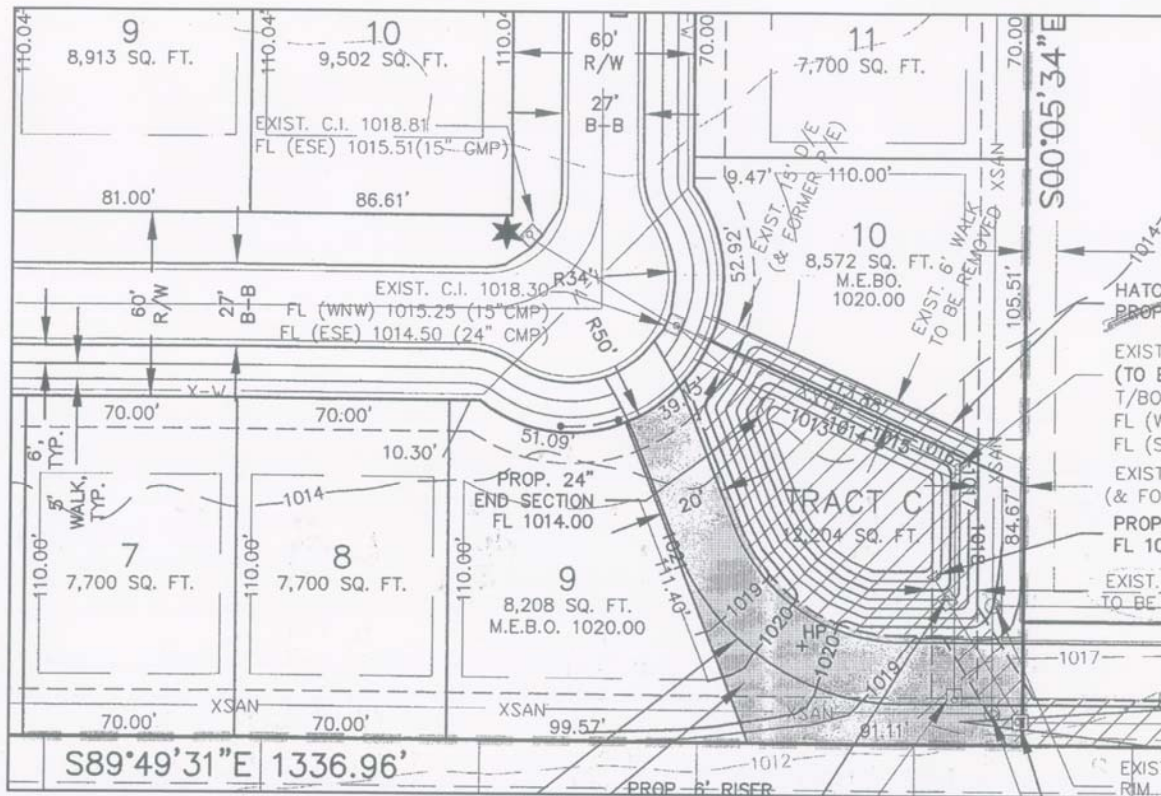


Figure 2. Detail of Maple Leaf Square preliminary plat showing sidewalk on the south side of the street and street right-of-way. Area with narrower right-of-way is marked with a star.

Conformance

As Staff has determined that the required criteria for a variance have not been met and recommends denial of the requested variance from the Street Connection requirement in Section 20-810(d)(2)(iii) and the Sidewalk requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations, the preliminary plat is not conformance with the standards and requirements of the Subdivision Regulations and the Development Code; therefore, Staff recommends denial of the preliminary plat of Maple Leaf Square.