

.....
Date
April 24, 2006

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 6, 2006, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Andrea Anania (owner) 3706 SE 22nd Street for an amendment to the preliminary and final "R-6" Development Plans for "White Oak Park and Hidden Valley Plat No. 2" to remove all open space easement designations on private properties in order to allow construction of a fence on the rear portion of 3706 SE 22nd Street and other affected lots, subject to granting of relief to the minimum percentage of common land by the Board of Adjustment.

Subject property is more specifically described as follows:

Lots 1 through 37, White Oak Park, an Official Plat, and Lots 1 through 5, Hidden Valley Plat No. 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed amendment is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on May 8, 2006, at which time the City Council will hear both those who oppose and those who favor the proposal.

2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

(Continued)

★ Roll Call Number

Agenda Item Number

18

.....
 Date April 24, 2006

-2-

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown
 Roger K. Brown
 Assistant City Attorney

(ZON2006-00032)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

 City Clerk

April 24, 2006

18

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held April 6, 2006, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty	X			
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz				X
Kaye Lozier				X
Brian Meyer	X			
Brian Millard				X
Brook Rosenberg				X
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

APPROVAL of a request from Andrea Anania (owner) 3706 SE 22nd Street for an amendment to the preliminary and final "R-6" Development Plans for "White Oak Park and Hidden Valley Plat No. 2" to remove all open space easement designations on private properties in order to allow construction of a fence on the rear portion of 3706 SE 22nd Street, subject to granting of relief to the minimum percentage of common land by the Board of Adjustment. (ZON2006-00032)

Written Responses

10 In Favor
2 In Opposition

This item would not require a 6/7 vote by City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends, in addition to the applicant's request, that the Commission make recommendation to the City Council to amend the "R-6" Development Plan to remove all open space easement designations on private properties subject to granting of relief to the minimum percentage of common land by the Board of Adjustment.

Staff further recommends that the Commission direct staff to initiate appeal to the Board of Adjustment to reduce the minimum common land requirement by Exception of 0.987 acres less than the minimum required 2.229 acres.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to build a fence within the area designated in the "R-6" Development Plan for "White Oak Park" and "Hidden Valley Plat 2" as an open space easement.
2. **Size of Site:** 11.713 acres total, 8.914 Net Development Area (minus right-of-way)
3. **Existing Zoning (site):** "R-6" Planned Residential Development District.
4. **Existing Land Use (site):** Single-family dwellings and open space.
5. **Adjacent Land Use and Zoning:**
 - North* – "R-6" & "R1-80", Uses are single-family dwellings and multiple-family residential apartments.
 - South* – "R1-60", "R1-80" & "PUD", Uses are single-family dwellings and Ewing Trace land lease community.
 - East* – "R1-80", Uses are vacant land and Evergreen Church of Christ.
 - West* – "R1-60" & "R1-80", Uses are single-family dwellings and Church of Jesus Christ Latter Day Saints.
6. **General Neighborhood/Area Land Uses:** The surrounding neighborhood is a mix of multiple-family residential and low density residential and land lease community uses.
7. **Applicable Recognized Neighborhood(s):** Ewing Woods-Evergreen Neighborhood.
8. **Relevant Zoning History:** The subject property was rezoned to "R-6" on May 22, 1978 by the City Council. On May 4, 1992 the "R-6" Development Plan was amended to redefine the area currently known as "Hidden Valley Plat 2" from a multiple-family residential designation to five single-family lots.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential
10. **Applicable Regulations:** In accordance with Section 134-657, the Commission reviews all amendments proposed for approved "R-6" Development Plans in the same manner as the consideration of the original Conceptual Plan and rezoning. The recommendation of the Commission is forwarded to the City Council for their final review and consideration.

Sec. 134-658. Standards.

Permitted principal and accessory land uses and lot area, yard and height requirements in the R-6 planned residential development district shall be as follows and shall prevail over conflicting requirements in this chapter:

(6) *The term "common land" as used in this division refers to land intended for the use of the residents of the development or the general public.*

(12) *Developments or portions thereof which are being developed for sale or resale shall contain common land in area totaling not less than 25 percent of the net development area.*

Any amendment approved by the Commission and City to the "R-6" Preliminary and Final Development Plan that would reduce the amount of common land below the standards in the Zoning Ordinance, will require relief by the Board of Adjustment to the above standards. In this case staff is recommending less than a 50% reduction in the common space requirement, therefore an Exception level of relief would be required. Staff recommends that the Plan and Zoning Commission direct staff to initiate this appeal for the White Oak Park "R-6" Development Plan area.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Landscaping & Buffering:** The original plan for "White Oak Park" provided both public open space and easements for open space on private properties in the development. These easements were also recorded on the plat and as a declaration of covenants for Lots 1-37. When the Plan was amended in 1992 to re-designate the Hidden Valley Plat 2 area for single-family use, it is unclear whether new easements were recorded on the "Hidden Valley Plat 2". The Legal Department has found no evidence of other than the reference to the plat drawing. Additional open space easements were added graphically to the new plat to include reference to the original open space easement language in the "R-6" Development Plan.

The open space easement language in the original development plan is as follows:

"Every owner shall have right of easement access, ingress, egress, use of and enjoyment in and to the open space easements which are reserved as shown on the recorded plat of White Oak Park, and such rights of easement shall be appurtenant to and shall pass with title to every lot. No owner shall obstruct or interfere whatever with the rights of other owners to open space easements, Specifically, nothing shall be planted, or constructed upon the open space easements which would hinder, obstruct or interfere with the rights of easement set forth above (i.e. access, ingress, egress, use and enjoyment)."

Based on this language the applicant has been denied a permit to build a fence within the area. After reviewing the overall "R-6" Plan area, staff has observed a number of possible encroachments into the easement areas. Therefore an action that would serve the benefit of the overall development is appropriate.

Staff believes that the pattern of use over time has not demonstrated that the open space easements on the "R-6" Plan have been beneficial to owners of the development for their intended common purpose. Staff further believes that releasing a portion of the open space requirement from the Plan will allow private owners to better maintain the designated easement areas and provide more beneficial use of their private property. There would still be 1.272 acres of publicly owned open space remaining for the benefit and enjoyment of owners in the development.

2. **Legal Requirements:** Removal of a portion of the open space easement designation by the City of Des Moines on the "R-6" Development Plan does not preclude or pre-empt the private enforcement of easements and covenants recorded against the properties by owners within the development. Staff recommends that individual property owners seek independent legal advice on the applicability of these easements and covenants recorded on individual private properties.

SUMMARY OF DISCUSSION

Erik Lundy: Presented the staff report and recommendation.

Mike Ludwig: Noted a majority of the garages in the easements were constructed at a time when permits were not required for accessory structures.

Andrea Anania, 3706 SE 22nd Street: Displayed some photographs and a rough drawing to explain her request, noting she cannot currently put a fence to her rear property line.

CHAIRPERSON OPENED THE PUBLIC HEARING

John Clark, 2801 Fleur Drive: Noted the subject lots are not Clark Company properties. Expressed support for the applicant.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Kent Sovern: Moved staff recommendation.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

Request from Andrea Anania (owner) 3706 SE 22 nd Street for an amendment the preliminary and final "R-6" Development Plans for "White Oak Park and Hidden Valley Plat No. 2".			File # ZON2006-00032	
Description of Action	Amend the preliminary and final "R-6" Development Plans for "White Oak Park and Hidden Valley Plat No. 2" to remove a 15-foot-wide public open space easement along the rear 15-feet of the property at 3706 SE 22 nd Street in order to allow construction of a fence on the rear portion of the subject property.			
2020 Community Character Plan	Low-Density Residential			
Horizon 2025 Transportation Plan	No Planned Improvements			
Current Zoning District	R-6 Planned Residential Development			
Proposed Zoning District	R-6 Planned Residential Development			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	11	2	0	<20%
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

White Oak Park - R-6 Amendment - Evergreen Ave & SE 22nd St ZON2006-00032



Item ZON 2006 00032

Date 4 April 2006 18

I am am not in favor of the request.

(Circle One)

RECEIVED Print Name Steve C. Sears

APR 06 2006 Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT 2108 Marsh Ct. Des Moines Iowa

50320-2315

Reason for opposing or approving this request may be listed below:

Item ZON 2006 00032

Date April 3, 2006

I am am not in favor of the request.

(Circle One)

RECEIVED Print Name LeAnn Stout

APR 06 2006 Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT Address 2100 Marsh Court

Reason for opposing or approving this request may be listed below:

Item ZON 2006 00032

Date 3-29-06 18

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED

APR 03 2006

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name Loretta R Dotson

Signature Loretta R Dotson

Address 4101 SE 22nd Street

Reason for opposing or approving this request may be listed below:

Item ZON 2006 00032

Date MAR 29, 06

I (am) (am not) in favor of the request.

(Circle One)


IN R.O.B

RECEIVED

APR 03 2006

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name VERLAN E. VAN GORD

Signature 

Address 2247 MAISH CT

Reason for opposing or approving this request may be listed below:

THIS AMENDMENT WOULD NOT AFFECT OUR PROPERTY
IN ANY WAY.

Item ZON 2006 00032

Date 3/29/06 18

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED

Print Name Howard S. Goffman

APR 03 2006

Signature Howard S. Goffman

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Address 4100 SE 22nd ST DSM

Reason for opposing or approving this request may be listed below:

I am in favor of the improvement
of property.

Item ZON 2006 00032

Date 4/1/06

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED

Print Name Scott E. Tomness

APR 04 2006

Signature [Signature]

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Address 3700 SE 21st Ct

Reason for opposing or approving this request may be listed below:

I (am) (am not) in favor of the request.

(Circle One)

18

IN file

RECEIVED

APR 04 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Reason for opposing or approving this request may be listed below:

Print Name Christopher Tanner

Signature *Chris Tanner*

Address 2201 Maish Ct, Des Moines, IA 50320

Horizontal lines for text entry.

Item ZON 2006 00032

Date 3-31-06

I (am) (am not) in favor of the request.

(Circle One)

IN R-6

RECEIVED

APR 05 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Reason for opposing or approving this request may be listed below:

Print Name TODD MADDEN

Signature *R Todd Madden*

Address 5909 Grand Ave. D.M. Ia 50312

Horizontal lines for text entry.

Item ZON 2006 00032 Date 3-29-06

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED

APR 03 2006

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name David R. Allen

Signature David R. Allen

Address 2224 Maish Ct

Reason for opposing or approving this request may be listed below:

Item ZON 2006 00032 Date 3/25/06

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED

APR 03 2006

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name Debra J Thelen

Signature Debra J Thelen

Address 3909 SE 23rd St.

Reason for opposing or approving this request may be listed below:

Fence improves the property

Item ZON 2006 00032

Date 18

I (am) (am not) in favor of the request.

(Circle One)

Print Name OSWALDO OLHOA

Signature [Handwritten Signature]

Address 3700 SE 22nd St

Reason for opposing or approving this request may be listed below:

RECEIVED

APR 10 2006

COMMUNITY DEVELOPMENT DEPARTMENT

RECEIVED AFTER P. 2 meeting

Item ZON 2006 00032

Date March 30, 2006

I (am) (am not) in favor of the request.

(Circle One)

SUBJECT PROPERTY APPLICATION R-6

RECEIVED

Print Name Andrea L. Anania

APR 03 2006

Signature Andrea L. Anania

COMMUNITY DEVELOPMENT DEPARTMENT

Address 3700 SE 22nd St

Reason for opposing or approving this request may be listed below:

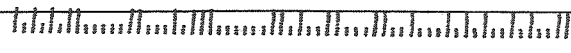
It makes sense to fence in the whole yard rather than half. It is aesthetically pleasing. There will still be a walkway because the proposed fence will not butt up against the privacy fence to the west. This fence in no way affects other property owners because it is in the back yard. Immediate neighbors have signed off and approved it.

Item ZON 2006 00082 Date 3/27/06 18
DES MOINES IA 503
I (am) (am not) in favor of the request.
(Circle One) IN R-6
31 MAR 2006 11

RECEIVED
APR 06 2006
COMMUNITY DEVELOPMENT DEPARTMENT
Print Name Tyan Ellsworth
Signature Tyan Ellsworth
Address 3724 SE 22nd St DM, IA 50320

Reason for opposing or approving this request may be listed below:

I am opposing this due to they just built a new park on SE 22nd for one reason. Another is - I like having the trees across the street from my house - it's great watching animals come up and out! I believe there are enough parks - we also have Easter Lake so close!! I do NOT believe it's a good idea!!!



Item ZON 2006 00082 Date 3-30-2006
I (am) (am not) in favor of the request.
(Circle One) IN R-6

RECEIVED
APR 03 2006
COMMUNITY DEVELOPMENT DEPARTMENT
Print Name BITA RAE CARLSON
Signature Bita Rae Carlson
Address 3934 SE 22 St

Reason for opposing or approving this request may be listed below:

