



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of October 15, 2011

DATE: October 3, 2011

SUBJECT: U-3306-11-1 USE PERMIT of Arlington Designer Homes, Inc to modify setback and yards on a pipe stem lot, located at N. Nottingham Street (RPC# 01-075-020).

APPLICANT:

Arlington Designer Homes, Inc.
4719 24th Road North
Arlington, VA 22207

C. M. RECOMMENDATION:

Defer, the subject use permit to the November 19, 2011 County Board meeting.

ISSUES: This is a use permit request to reduce the side yards on an existing pipe stem lot in order to construct a single-family dwelling. Several neighbors have expressed concern and opposition to the development of a new single-family dwelling on the lot.

DISCUSSION: The applicant requests a use permit to modify the side yard requirements on an existing 49-foot wide pipe stem lot, from 25 feet on both sides down to 8 and 10 feet. The proposed side yards would permit the construction of a single-family dwelling on the currently undeveloped pipe stem lot. Staff recommends and the applicant agrees, that the use permit request be deferred for one (1) month to allow additional time for the applicant and community to address concerns. Also, staff recommends the deferral to allow additional time for the applicant to provide requested plans illustrating the relationship between the proposed single-family dwelling on the lot with the side yards reduced to 8 and 10 feet, and the height and distance of and between existing structures. Staff further requests the applicant provide a conceptual landscape plan and tree protection and replacement plan. In allowing for a one (1) month deferral, staff believes that community issues and concerns could be more thoroughly discussed and the requested information appropriately evaluated to determine measures to mitigate any impact associated with the requested modification of Zoning Ordinance

County Manager:

BMD/GA

County Attorney:

[Signature]

[Signature]

Staff: Samia Byrd, CPHD, Planning Division
Sophia Fisher, CPHD, Planning Division

13.

PLA-6007

requirements. Therefore staff recommends that the County Board defer the subject use permit request to the November 17, 2011 County Board meeting.

PREVIOUS COUNTY BOARD ACTIONS:

None.

2612 North Nottingham St.
Arlington, VA 22207
September 15, 2011

Arlington County Board
2100 Clarendon Blvd., Suite 300
Arlington, VA 22201

SUBJECT: Use Permit Application – 2615 North Nottingham St. (RPC #01-075-004)

Dear Board Members:

We are writing to express our strong opposition to the proposed use permit for construction on the currently vacant pipe stem lot located at 2615 North Nottingham St. We live directly across the street from the proposed construction and we are gravely concerned about the short-term and long-term impacts to our street that would result if the house is constructed. In addition, we do not feel the proposed developer, Arlington Designer Homes, Inc., has acted in good faith dealing with the use permit request. Our specific concerns include:

- Not dealing in good faith—at a July 7, 2011 neighborhood meeting with the developer, it was revealed that the existing house in front of the pipe stem lot was integral to the real estate transaction and would need to be demolished and rebuilt at the same time the new house would be built to accommodate the construction on the pipe stem lot. To the best of my knowledge, this has not been revealed in the application for the use permit, and the developer told the group he was “not required” to do so. This is deceiving and misleading. Involving the second house will double the construction impacts to the neighborhood and should be considered when deliberating the use permit. In addition, the 8-10 neighbors attending this meeting expressed many concerns and opposition to the proposed development on the pipe stem lot and would not sign the developer’s statement of support. We understand this opposition has not been conveyed to the Board by the developer.
- Short-term impacts—we are greatly concerned about the impacts to our neighborhood related to construction of the **two** houses at 2615 N. Nottingham St. This particular block of Nottingham Street is very pedestrian and child friendly, and construction related activities (demolition, excavation, and building) will involve large trucks and heavy equipment coming and going for an extended period of time, jeopardizing the safety of many residents and children. We are also concerned about parking of trucks, cars, and related construction equipment on Nottingham St. Currently most homes along the street need to have on-street parking for one or two cars at varying times of the day, and existing parking needs should not be displaced by this project.
- Long-term impacts—we are most concerned about the permanent traffic and safety impacts that will result to our street and neighborhood with the addition of a new house built on the vacant pipe stem lot. As previously stated, this particular block of Nottingham Street is very pedestrian and child friendly. This block of Nottingham Street

only has a short section of sidewalk, but children can still ride bikes, neighbors walk their dogs, and joggers feel safe. Construction of a new house on the pipe stem lot will result in at least two more vehicles permanently added to the street traffic, as well as an unknown number of other vehicles that will be visiting the house. Arlington County has spent a considerable amount of money in the Nottingham neighborhood to install traffic calming devices (speed bumps and curb extensions) because of already heavy traffic usage and concern for the safety of local residents. It seems completely contrary to now add yet more traffic to the neighborhood by allowing construction on the pipe stem lot.

In summary, we are opposed to approval of this use permit. Doing so will permanently alter the quiet family-oriented character of this block of Nottingham Street, and will threaten the safety of children and residents.

Sincerely,



Jeffrey Benoit



Barbara Benoit

09/10/2011

To whom it may concern,

I would like to express my support for the development of the properties known as the following:

lot 7-D resub pt 7 samuel birch est 7210 500 sq ft of the Samuel Birch Estate AND lot 4 resub pt brittingham and subd pt harrill property 6001 sq ft

We feel that the proposed site development and house to be built is in keeping with the intent and character of our neighborhood. We recognize that the pipe-stem lot which was legally platted and recorded prior to 1970 was purchased by Mr. Stroh as a buildable lot, sold and conveyed as a buildable lot and should be able to be used and developed with its original intent.

Thank you,



Richard Hargrove
2622 N. Lexington St.
Arlington, Va 22207



Dear Ms. Byrd,

Thank you for contacting me regarding the Property on North Nottingham. I hope you were able to go by and take a look at the property so that you have a good idea of the neighborhood and what we are proposing.

As you are going through the planning process I think it might be useful for you to understand a little of our process.

The County Ordinance for this area (R-6) requires side yard setbacks of 25 feet from each side lot line, and since Lot 7-D, the subject lot, is only 50 feet wide, there is no buildable area left. This lot had been a buildable lot until the county adopted this set back requirement ordinance in 2003. This ordinance is only applicable to pipe stem lots, and is not required of any other residential lot in the R-6 zoning classification. The proposed use, single family residence meets all other existing requirements, except the side yard lot requirement of 25 feet. It is in keeping with the character of the neighborhood and is proposed to be like the other numerous new houses built in the neighborhood.

Unless the County Board grants a use permit, allowing the proposed house, what has occurred is a regulatory taking, which is illegal without compensation by the County.

The legal precedents are very clear; a regulatory taking cannot take all of a property owners rights without compensation. In the Supreme Court case *Lucas v. South Carolina Coastal Council*, 505 US 1003(1992), the majority opinion, in essence it held that when regulation deprives an owner of all economically viable or productive use of the property a per se taking has occurred and the government must compensate the owner, unless the regulation deals with a nuisance, or the regulation is a part of the state's background principles of real property law (none of these are applicable here) .

Va Code Section 15.2 – 2307 vests rights in the landowner and these shall not be affected by subsequent amendments to the zoning ordinance.

Arlington Designer Homes is a family corporation incorporated in 1983. It has built over 70 homes within the county. It has a good track record of quality construction and of meeting its obligations to the county and its citizens, and is the first company in Arlington to have an NAHB Research center Gold certified Green home. This home is also planned to be a Green home.



Please let me know if you have any questions or concerns.

I appreciate your continued assistance in this matter and hope we can come to a resolution as soon as possible. Thank you,

Andrew Moore,

President Arlington Designer Homes, Inc

Cc: Tim Hughes, Esq, Tad Lunger Esq, Bean, Kinney and Korman

CHRONIS, LLC

COUNTY BOARD OFFICE
RECEIVED

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ARISTOTELIS A. CHRONIS
1145 N. VERNON ST.
ARLINGTON, VA 22201
TEL. 703.888.0353
FAX. 703.888.0363
achronis@chronislaw.com

September 20, 2011

VIA HAND DELIVERY:

Christopher Zimmerman, Chairman
Arlington County Board
2100 Clarendon Boulevard, Room 300
Arlington, Virginia 22201

RE: Use Permit Application – N. Nottingham Street, Lot 7-D (RPC #01-075-020)
Neighborhood Opposition

Dear Chairman Zimmerman:

This law firm represents several concerned neighbors surrounding the above-referenced Property which the subject of a pending Use Permit Application currently set for review on the County Board's October 15, 2011 agenda, and is sending this correspondence at their direction and on their behalf. Specifically this firm represents the interests of the following homeowners who have agreed to have their names included on this letter in opposition (See enclosed map highlighting the represented property owners.)

Property Owner	Property Address	Proximity to Subject Property/Properties
Michael & Christine Bloomquist	5827 N. 26th St.	Adjacent Property to 10' setback
Laurie Vikander	2612 N. Lexington St.	Adjacent Property to 10' setback
James and Lorraine Hendry	5822 N. 27th St.	Adjacent Property to 8' setback
Betty Fadeley	5826 N. 27th St.	Adjacent Property to 8' setback
Jeffrey and Barbara Benoit	2612 N. Nottingham St.	Across from Pipe-stem Entrance
Sara and Andrew Sullivan	2622 N. Nottingham St.	Across from Pipe-stem Entrance
Justin A. and Katrina R. Ivatts	2609 N. Nottingham St.	Adjacent to Lot 4 Proposed Construction
Nancy Wilck and Glen Gulyas	2626 N. Lexington St.	In Block
David & Mary Jane Konstantin	5835 N. 26th St.	In Block

Having reviewed the application and learning of the outcome of the initial meeting on July 7, 2011 between the applicant, Arlington Designer Homes, Inc., and several neighbors, (most of whom are represented amongst the above-listed homeowners), there are several concerns shared by the neighbors and this office regarding not only the appropriateness of this application, but the completeness and accuracy of the application itself in representing not only the potential impact of the proposed development on the surrounding neighborhood but the actual conditions of the properties surrounding the Subject Property.

This application seeks a modification of the twenty-five (25) feet side yard requirements for the “pipe” section of a pipe-stem lot pursuant to Section 31.A.16 of the Zoning Ordinance to allow for side yard setbacks of 8’ and 10’ respectively. That section requires that any such modification be pursuant to use permit approval as set forth in Section 36.G of the Zoning Ordinance. Pursuant to Section 36.G. of the Zoning Ordinance, the County Board must find that the use will not (1) affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use; (2) be detrimental to the public welfare or injurious to property or improvements in the neighborhood; (3) be in conflict with the purposes of the master plans of the County. In granting any use permit the County Board is permitted to designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so. (Given the circumstances surrounding the proposed development for this Property as set forth below, it is unlikely that the Developer would voluntarily agree to any meaningful conditions or that such conditions could be imposed that would alleviate the concerns of the impacted neighbors, particularly since the Developer has not peremptorily offered any conditions to alleviate any anticipated concerns.)

The County Board would be remiss in reviewing this Application in the vacuum under which it has been presented by the Applicant. Not mentioned in the Application are the plans for Lot 4, 2615 N. Nottingham St., which is also owned by the same owners of the Subject Property. (It is worth noting that Lot 7-C, behind the Subject Property is also owned by the same owners of the Subject Property, negating any concerns about a taking or the potential loss of use of the Subject Property should the County Board fail to grant the requested modifications, given the contiguous nature of the three properties under common ownership.) As revealed to the neighbors in the Developer’s July 7, 2011 meeting, but omitted in the application, the plan is to develop both the Subject Property and Lot 4 at the same time, which would entail the demolition of the existing one-story dwelling on Lot 4 and the construction of two new houses. While plans have not been revealed for Lot 4, the assumption has to be that, at a minimum, the largest by-right structure that the lot would support would also be built, likely increasing the number of stories to the maximum height allowed in the zoning district and expanding on the existing house footprint, further reducing the amount of open space in the neighborhood. Construction of these two lots at the same time would double the construction noise, construction traffic, and would likely increase the construction timeline affecting the surrounding neighbors. As stated in the September 15, 2011 letter to the County Board from Jeffrey and Barbara Benoit, owners and residents of 2612 N. Nottingham St., which is across the street from the pipe-stem entrance, the safety concerns for the children and other pedestrians in the neighborhood would be doubly impacted both in the short term from the construction and in the long term from the addition of the multiple vehicles associated with two new houses, which would likely use the same narrow driveway. These concerns should strongly be considered by this Board in denying the requested modifications that would allow for the construction of a dwelling on Lot 7-D.

Having been apprised of the Developer’s true intentions to simultaneously develop the Subject Property and the property adjacent to the pipe-stem entrance with two large houses, the County Board should further consider the impacts of such proposed construction on the public welfare

and the property and improvements in the neighborhood. A look at the surrounding area reveals modest development on lots that are large enough to support the houses that are situated thereon while still leaving ample open space and tree canopy to allow for backyards for children to play and unrestricted views. (See enclosed maps.) It is noteworthy that the Bloomquists, owners of Lot 3A which is directly adjacent to the proposed 10' side yard have left this 6500 square foot lot essentially undeveloped to serve as a backyard play area for their young family that resides at 5827 N. 26th Street. The Vikander property at 2612 N. Lexington Street which also is adjacent to the proposed 10' side yard also features a sizeable backyard further creating significant open space as it abuts the aforementioned Bloomquist Lot 3A. Similarly the Fadeleys and Hendrys, whose properties abut the proposed 8' side yard have also left the vast percentage of their lots open as well. (The Hendrys also note concerns that the Developer may be misrepresenting the lot line on the 8' side yard including portions of the Hendrys' property along with that of the Fadeleys and Finleys that lies on the other side of the fence in its estimates of the width of the pipe-stem lot. The Hendrys believe that the fence is entirely on the neighboring properties and set back from the property line and that as a result the Applicant may be asking for less than an 8' side yard.) The "reward" to these neighbors' collective property values for such prudent placement should not be the inclusion of a massive 7200 square foot development towering approximately 35 feet high, a mere 8 to 10 feet from their property lines. The application highlights the removal of almost every tree on the Subject Property without providing any adequate tree screening to these neighbors from views of the oversized structure that would replace these trees.

In reviewing the application, the homeowners whose interests are represented by this office agree that the use will fail the first two criteria for the granting of a use permit. A few of the owners provided comments for inclusion in this letter as set forth below that should further be considered by the County Board, particularly in light of the erroneous representation by the Developer in its Application that "the neighbors were very supportive of what we (the Developer) were trying to do at our July 7th meeting, and received many words of encouragement," particularly given that most of the neighbors that are included in this letter were the majority of those who attended that meeting.

Neighbor Comments:

I am not in favor of adding a big house to the pipe-stem lot behind the Stroh house on Lexington Street. I live right next door to the Strohs, and I do not want a towering new house only 10-15 feet from my property line. Currently, when I look out from my back deck, I see only trees. If they are going to remove all the trees from the lot, as I understand the proposal, there would be nothing to shield the huge new house from my backyard.

– Laurie Vikander, 2612 N. Lexington St.

We have lived in our house since 1983 and had never heard until a few months ago that there was a separate lot from the one adjacent to Nottingham Street that was directly behind our property. We have seen the neighborhood change dramatically with the construction of large houses across the street, next door, and around the area, but the proposed construction on the pipe-stem is a step too far in our view.

The house the builder is planning to build just eight feet from our property line will tower over our house and backyard, severely diminishing the value of our large yard and our privacy. We also are concerned about the trees and the bit of our property that lies on the other side of the fence and includes a dogwood tree. Squeezing three houses on the land between Lexington Street and Nottingham Street is excessive and greedy. The builder and the property owner can make plenty of money just by building a large house on the Nottingham lot and leaving the pipe-stem lot for a suitably sized backyard. We also are concerned that the builder is including our (and the Finleys' and Betty Fadeley's) land on the other side of the fence in his estimates of the width of the pipe-stem lot. The fence is entirely on our properties and set back from the property line.

- Jim and Lorraine Hendry, 5822 N. 27th St.

Living directly across the street from the proposed new development, we are opposed to construction of a new house on the pipe-stem lot. Allowing construction of this house will result in increased traffic on Nottingham Street and in the neighborhood, where the county has already spent millions of dollars on traffic calming measures. The increased number of cars will also permanently alter the current child and pedestrian friendly nature of the street.

- Jeffrey and Barbara Benoit, 2612 N. Nottingham St.

We have lived in our home across the street from the proposed construction site since 1999. Our own back yard is also a pipe-stem lot. We purchased it in order to prevent exactly the type of development which is proposed on the lot(s) on 2615. Though I understand everyone's need/right to improve upon what they own, we hope the Arlington County does what it can to protect our neighborhood from becoming a sort of townhome community, instead of separate family homes. I believe that was the spirit of the change Arlington made restricting building on pipe-stem lots in 2007, the same regulation this developer is trying to now get the County to overturn. The new home proposed would dwarf the surrounding homes - with the exception of the even larger one proposed to be built in front. It would not only have no real yard to speak of, it would, by its proposed placement in the middle of a block, interfere with what had been everyone's backyard - now a giant view of a house(s). This attempt to build on the pipe-stem is motivated not by anyone's need for shelter, but only for money, and not with the consideration of the surrounding neighborhood."

- Sara and Andrew Sullivan, 2622 N. Nottingham St.

Our main concern with the construction project is the likelihood of drainage issues and the damage that would incur to our residence. When a large home was built on the south side our residence, the builders blocked the drainage with a large separated garage on the property line. Based on the topography of the area, the natural drainage flows from the north and east across the back of our property and on to the south. We bought our home shortly after this custom home had been built and have had water damage to our basement and had to have a sump pump installed. We are very concerned that two additional properties of this proportion may flood our basement yet again unless precautions are taken by the builder to drain the excess water into a man-made pond on the property or find a way to drain the water away from our house. The grading of the land at 2615 would leave any increase in water that results from the building project to drain onto our property, causing water problems.

- Justin A. and Katrina R. Ivatts, 2609 N. Nottingham St.

I am definitely opposed to the construction, the house would be too close to the existing properties on either side, the removal of the trees, which would leave a bare lot with the house. Just the idea of a

driveway right beside the fence, on the 27th St. side, all of this on a lot that is just too small. This will clearly change the neighborhood...

- Betty Fadeley, 5826 N. 27th St.

Given these concerns, these neighbors ask that the County Board reject the proposed side yard modifications to effectively prevent development of an oversized structure on a pipe-stem lot in a neighborhood where such development would be completely out of place. We ask this Board to reward the efforts of these neighbors who have sacrificed their own development options in support of the ideals of maintaining open space, preserving existing trees and unrestricted views, and allowing for areas for their children to safely play. Several of these neighbors have already submitted separate letters to the County Board and intend to oppose this Application in person at the County Board hearing. In the meantime, please let me know if you have any questions or require any additional information. I am copying Planning Staff on this correspondence so some of these concerns can be addressed in their upcoming Staff Report as well.

Sincerely,

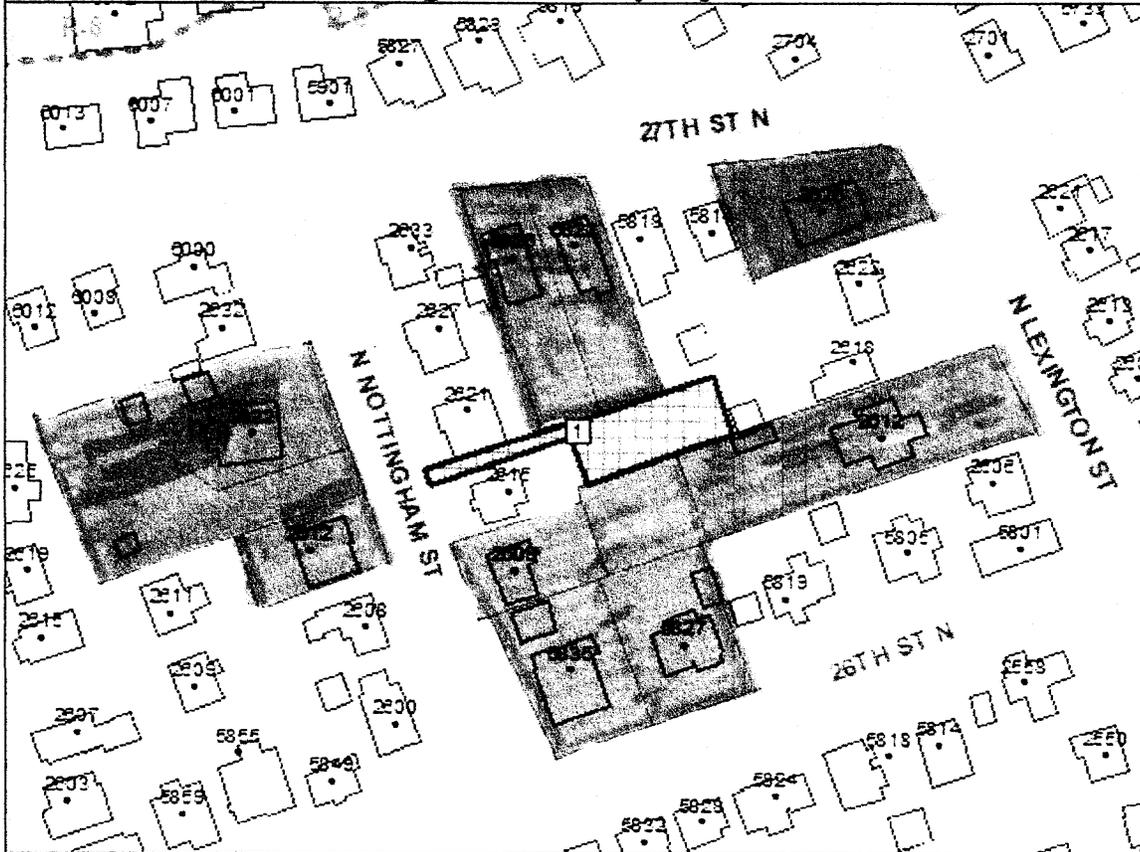


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cc: Samia Byrd, Planning Division, DCPHD

Enclosures as stated.

Nottingham St. Property



Selections

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[1] Subject Property

[█] Represented Property Owners/Properties in Opposition to Proposed Development.

Property Owner	Property Address	Proximity to Subject Property/Properties
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Nottingham St. Property



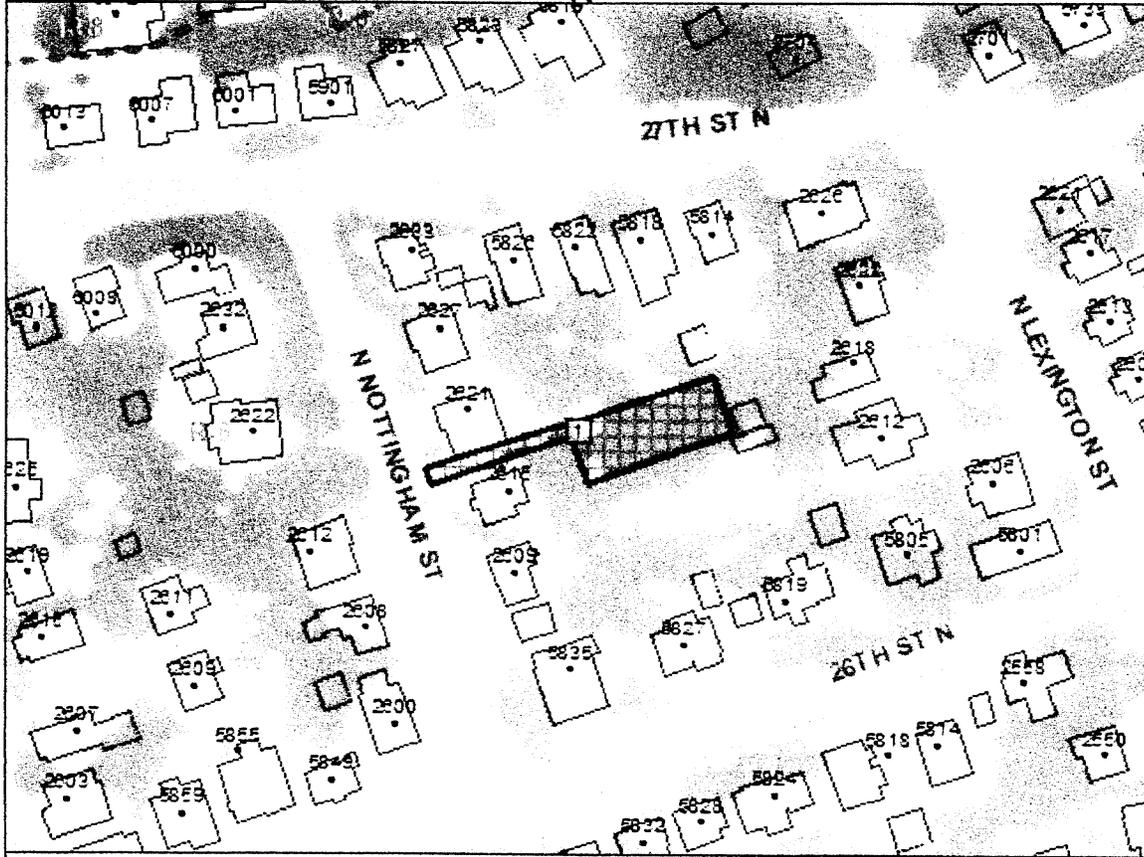
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Nottingham St. Property
Tree Canopy



Selections

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