

ZONING DUE DILIGENCE AND MUNICIPAL ZONING COMPLIANCE

Information required by the Minimum Standard Detail Requirements and Classifications ALTA/ACSM LAND TITLE SURVEYS (2005), as relating to zoning matters, will generally fall below the needs and expectations of prospective buyers and lenders. Item No. 6 of the Optional Survey Responsibilities and Specifications (Table A) requires the surveyor to identify, and show if possible, setback, height and bulk restrictions of record or disclosed by applicable zoning or building codes. Each of these can be noted on the survey, with the setback lines shown on the drawing.

To aid the reviewer in determining zoning compliance, Table A Item 4, indicating the land area, can be used along with Item 7 (b)(1), showing the square footage of the footprint of any buildings, to determine the bulk or density ratio. Item 7(c), indicating the height of at least the highest building on the site, will verify height compliance. The “base” ALTA Survey requirement to show distances between buildings and the nearest property line, along with plotted building setback lines, will highlight any setback issues. Item 9 of Table A requires a count and break-down of the number and type of parking spaces on the site.

This information is the most that can be expected from the local surveyors under normal application of the 2005 ALTA Survey Requirements. The surveyor is able to show the raw data pertinent to the site, but as stated in the preamble to Table A of the Requirements, the surveyor cannot make a certification based upon an interpretation of local zoning codes.

While the survey may be fully in compliance with the 2005 ALTA Survey Requirements, this information falls short in providing a comfort level as to zoning issues. Therefore, Counsel for the Lender or Purchaser, in conducting its due diligence review of zoning compliance, must go further than the survey provides. A list of necessary due diligence items to be reviewed by Counsel would include:

- 1 . The specific zoning designation of the site, as established by the current municipal code, as well as any prior designations.

2. The uses allowed under the zoning designation established by the zoning ordinance and whether the present use of the subject site is legally permitted.

3. The minimum yard or setback requirements, and a review of the survey for compliance.
4. The building height requirement, whether by number of stories or actual height above ground level, and a review of the survey for compliance.
5. Floor Space Area Restrictions of the property. The relationship of the square footage of the land area versus the square footage of existing buildings would be checked for proper ratio. Specific density per acre requirements based upon number of units, and floor area ratios based upon the total square footage of multistory buildings, would also be considered.
6. The formula for determining the minimum parking requirement and the "mix" of existing units on the site. When calculated, a comparison of the required parking count to the actual site count, as shown on the survey. Handicap and compact spaces would also be addressed.
7. Special circumstances to be considered would include legal non-compliance of any of the above factors, the issuance of zoning compliance letters from the municipalities, the existence of variances, council minutes, certificates of occupancy, building inspections, the effect of site plan approvals, airport zoning districts, and businesses serving alcohol, just to name a few.

If your staff has tried to gather this missing information two days before a closing, you know how frustrating it can be. Municipal officials with no sense of urgency and local surveyors with little motivation can monopolize crucial hours before the closing of a major transaction.

In recognition of this time-consuming process, we are pleased to introduce a unique solution to this frustration. The Planning & Resource Corporation (PZR), an Oklahoma City-based consulting firm, has expanded its scope of services to research, review and analyze site zoning information on a national basis. This unique service is performed by our staff of municipal zoning and survey experts, familiar with the diverse aspects of zoning research and survey review.

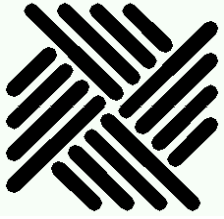
PZR has developed a format with which to supply your staff with independent, reliable information to create a comfort level as to zoning compliance. This information will be provided to your staff early in the process and will be supported by documentation directly from the municipality of the site. Specific sites with zoning problems will be discovered early in the due diligence process, allowing action to be taken to resolve most issues. Our

staff will be available to assist in resolving these issues arising from the review process.

Our Zoning Compliance and Site Summary Report can be modified to meet your specific requirements, and copies of zoning ordinances, maps, planned unit development reports, names and telephone numbers of local zoning boards, occupancy permits and letters of compliance, if available, and other relevant documentation will be provided. PZR will coordinate with local municipalities, surveyors and your staff to gather and interpret available data necessary to make the most informed judgments concerning the zoning issues on your sites. This will benefit your staff in making crucial decisions about site zoning history, current conditions, and potential future risk of properties involved in pending transactions.

Our growing clientele has found this service to be invaluable, particularly where ALTA 3.0 or 3.1 title endorsements are cost prohibitive or are simply unavailable. If this is a service that might benefit you or your colleagues, please write or give me a call and we can discuss the concept in greater detail.

We are available to answer any questions or comments you may have about The Planning & Zoning Resource Corporation. Feel free to contact David Anderson at 800-344-2944 or davida@pzs.com to find out how PZR can meet your needs, or visit them on the web at www.pzs.com.



The Planning & Zoning Resource Corporation

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ZONING AND SITE REQUIREMENTS SUMMARY

**ROCHESTER HEALTH CARE CENTER
#0886
2215 HIGHWAY 52 NORTH
ROCHESTER, MINNESOTA**

Prepared For:

TO BE DETERMINED

Date: Final – 7/14/2005

PZR SITE NUMBER: 39796

NATIONAL PLANNING & ZONING CONSULTING SERVICE

THE PLANNING AND ZONING RESOURCE CORPORATION

100 NE 5TH STREET
OKLAHOMA CITY, OKLAHOMA 73104
(405) 840-4344
(405) 840-2608 FAX

ZONING AND SITE REQUIREMENTS SUMMARY

I. Property Location and Size

1. Jurisdiction:	<i>City of Rochester, Minnesota</i>
2. Name:	<i>Rochester Healthcare Center - 0886</i>
3. Address:	<i>2215 NW Highway 52 North</i>
4. Size:	<i>1.63 Acres or 71,002.8 Sq. Ft. +/-</i>

II. Existing Land Use and Zoning

1. Date of Existing Ordinance:	<i>February 7, 2005 as provided by the City Website: www.ci.rochester.mn.us/ldm/</i>
2. Existing Zoning Designation:	<i>"B-1" Restricted Commercial Zoning</i>
3. Adjacent Zoning Designation and or Uses if Applicable:	<i>Not Applicable</i>
4. Existing Land Use:	<i>54 Bed Nursing Facility</i>

<i>Is The Existing Use in Conformance?</i>	<i>No, Not a Permitted Use; Per Dave Gross, Planner, the use is Legal Nonconforming, See Section VI</i>
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III. Zoning Regulations

1. Are copies of zoning regulations available for this site?	<i>Yes, Attached</i>
2. If any aspect of the property is not in conformance with current zoning, does the municipality provide ordinances dealing with non-conforming use?	<i>Yes, Attached</i>

IV. Property Specification

1. Building Set-Back Lines

- a. Front: **15 Feet**
- b. Sides/Rear: **0 Feet**
- c. Parking: **8 Feet from the Front Street**

Is The Existing Building in Conformance? Yes

2. Building Size

- a. Maximum Building Height or Stories: **30 Feet**
- b. Existing Building Height or Stories: **9 Feet**
- c. Building Site Area Requirements: **No Minimum Required**

Is The Existing Building in Conformance? Yes

3. Density

- a. Building Density Formula: **Maximum .50 Floor Area Ratio
Minimum 12% Landscaped Area**
- b. Approximate Building Footprint: **14,705 Square Feet**

Is The Building Coverage in Conformance? Yes, Existing: .20 Floor Area Ratio & 22% Landscaped Area

4. Parking

- a. Parking Space Formula: **1 Space per 6 Beds (54 Beds) plus 1 Space per Employee on the largest shift (24 Employees)**
- b. Parking Spaces Required: **9 + 24 = 33 Total Parking Spaces**
- c. Existing Parking Spaces: **36 Total Parking Spaces (Including 2 Handicapped)**

Is The Existing Parking in Conformance? Yes

V. Site History

- | | |
|---|---|
| 1. Was special permitting or condition(s) applied to existing zoning? | Yes |
| a. Site Plan Approval or Planned Unit Development?
<i>(Copy not available from the City.)</i> | Site Plan Approval |
| b. Other? | None |
| 2. Are there any outstanding building or zoning violations on file? | Per Diana Kling, Building Safety Department, "The permit record files contain no outstanding building code violations regarding the property." See attached letter. |
| Per Dave Gross, Planner, "Our office has no record of unsatisfied zoning, subdivision, building, fire or other ordinance violations." See attached letter. | |
| 3. Is a Certificate of Occupancy available for the site? | Per Diana Kling, Building Safety Department, "There is no Certificate of Occupancy for the original construction of this property in December, 1967. (Please note that the present State Building Code which requires a Certificate of Occupancy has been in effect since July 1, 1972, but only applies to construction with permits and inspections after that date. It is not retroactive for the occupancy of buildings constructed prior to that date.)" See attached letter. |

VI. Conclusions

1. Conformance Status:

Legal Nonconforming

Per Dave Gross, Planner, this site was constructed prior to the adoption of the zoning ordinance in 1992 and thus is considered legally nonconforming. Please note, per the Building Department this site was originally constructed in 1967.

2. Nonconforming Characteristics of the Site:

1. Use not permitted in the B-1 District.

3. Recommended Action:

None

4. Rebuildability Clause:

Per the City of Rochester Land Development Manual, chapter 65: "A nonconforming use of land or structure shall be terminated if it has been discontinued for any reason (except where governmental action impeded access to the premises) for a period of 365 calendar days or more. A nonconforming use may be resumed or reestablished without limitation as long as the period of discontinuance has not exceeded 365 calendar days. Nonconforming commercial, industrial, or institutional uses located in a nonresidential district which have been discontinued for a period of 365 days or more may be resumed or reestablished or changed to another nonconforming use regardless of the length of discontinuance upon approval through the Type III review procedure, utilizing a Phase I hearing process, with the Council as the designated hearing body, and subject to the findings contained in 65.330.

Where a structure housing a nonconforming use has been damaged to an extent greater than 50 percent of the County Assessor's Market Value of the structure, the nonconforming use shall be terminated, unless approval to rebuild is obtained under paragraph 65.320 (2). Where the structure is damaged to an extent less than 50 percent of the County Assessor's Market Value, the use may be reestablished within three years from the date of the damage.

A nonconforming structure which has been damaged or destroyed to an extent not exceeding 50 percent of its replacement cost (including labor and materials) may be restored to its original condition if said restoration begins within 12 months from the date the damage occurred. Should said restoration not begin within this time period, any subsequent work done to the structure shall be in conformance with the ordinance, unless approval through the Type III review procedure, utilizing a Phase I hearing process, with the Commission as the designated hearing body, is obtained to allow reconstruction in a manner which would not increase the nonconformity of the structure."

See attached for full text.

Other Comments:

The Planning & Zoning Resource Corporation has relied on information provided by the following:

<p>Municipal Officials</p> <p>City of Rochester</p> <p>Diana Kling, Building Safety Department (507) 281-6134</p> <p>Dave Gross, Planner (507) 285-8232 2122 Campus Drive Rochester, MN 55904</p>	<p>Surveyor</p> <p>GGG Inc. 14070 Highway 52 SE Chatfield, MN 55923 (507) 867-1666 Survey Dated: <u>6/22/2005</u></p>
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This report was prepared by Carri Howard. Questions may be directed to David Anderson at 405.840.4344, Extension 3337 or by email to davida@pZR.com. Please reference PZR Site Number 38796.