

**CITY OF FORT COLLINS  
TYPE 1 ADMINISTRATIVE HEARING**

**FINDINGS AND DECISION**

HEARING DATE: Wednesday, December 3, 2014

PROJECT NAME: Boughton House Subdivision Modification of Standard

CASE NUMBER: MOD #140002

APPLICANT/OWNER: Randy Everett  
113 North Sherwood Street  
Fort Collins, CO 80524

HEARING OFFICER: Marcus A. McAskin

**PROJECT DESCRIPTION:** This is a request for a stand-alone Modification of a standard in the Neighborhood Conservation Medium Density (N-C-M) zone district, specifically the dimensional lot width standard set forth in Land Use Code Section 4.8(E)(1), which requires a minimum lot width of forty feet (40').

The request has been submitted in advance of a formal request to subdivide the existing lot owned by the Applicant (containing approx. 0.72 acres) into two (2) lots.

Parcel 1 (proposed) would be approximately 15,255 in area and would be twenty seven feet (27') wide in the front portion (abutting North Sherwood Street), widening to forty feet (40') in the middle portion of the proposed lot and ultimately to approximately one hundred and fifteen feet (115') in the rear portion of the proposed lot.

Parcel 2 (proposed) would be approximately 16,035 in area and is the lot on which the existing historic single family home would remain.

The Subject Property is a historic single family residential property located at 113 North Sherwood Street, in the older West Side Neighborhood near downtown Fort Collins. The Subject Property is located west of North Sherwood Street, north of West Mountain Avenue, south of Laporte Avenue, and east of North Whitcomb Street.

The Subject Property contains an existing historic single family house and associated outbuildings and structures, known as the "Boughton House."

The historical property contains an accessory barn building with habitable space in the rear of the lot, and a root cellar building. The existing single family home would remain on one of the lots, specifically Parcel 2. The barn building would remain on the other lot, Parcel 1, to enable separate sale and conversion to a single family dwelling. As demonstrated in the application materials, Parcel 1 and Parcel 2 would each have their own driveway access.

The Applicant has not yet formally submitted a project development plan ("PDP") to the City.

However, the Applicant has submitted a conceptual plan for the Boughton House Subdivision Modification (the “Plan”) to City Staff. The Plan was presented to the Hearing Officer at the December 3, 2014 public hearing.

SUMMARY OF DECISION: Approved.

ZONE DISTRICT: N-C-M (Neighborhood Conservation Medium Density District).

HEARING: The Hearing Officer opened the hearing at approximately 5:00 p.m. on December 3, 2014, in Conference Room A, 281 North College Avenue, Fort Collins, Colorado.

EVIDENCE: During the hearing, the Hearing Officer accepted the following evidence: (1) Planning Department Staff Report; (2) PowerPoint presentation prepared by Staff including multiple photographs of the subject property; (3) Block Context Plan and Sketch Plan submitted by the Applicant; (4) affidavit of publication dated November 25, 2014, confirming publication of the notice of public hearing in the Fort Collins Coloradoan on November 25, 2014; and (5) notice of public hearing dated November 18, 2014. In addition, the City’s Land Use Code (“Code”), the Comprehensive Plan and the formally promulgated policies of the City are all considered part of the record considered by the Hearing Officer.

TESTIMONY: The following persons testified at the hearing:

From the City: Clark Mapes, AICP, City Planner

From the Applicant: Randy Everett

From the Public: Chet Wisner, 508 West Mountain Avenue

Jim Kelly, 430 West Mountain Avenue (email comment submitted to City Staff on October 27, 2014)

### FINDINGS

1. Evidence presented to the Hearing Officer established the fact that the hearing was properly posted, legal notices mailed and notice published.
2. The Subject Property, located at 113 North Sherwood Street and consisting of approximately 0.72 acres, is situated in a neighborhood that has primary dwellings units located behind existing dwellings units, some on existing flag lots.
3. The Subject Property is known as the Boughton House property and is a prominent historic resource in Fort Collins.
4. The large Queen Anne style home located on Subject Property was constructed in or about 1894, with the barn/summer house building added within a decade.

5. The Subject Property includes two gravel driveways, one to the main house and one to the barn/summer house in the rear of the existing lot.
6. The Staff Report identifies the Subject Property as being listed in the National Register of Historic Places. The Applicant confirmed this fact at the December 3, 2014 public hearing.
7. The Hearing Officer evaluated the request based on findings required under Section 2.8 of the Land Use Code governing Modification decisions.
8. During the Applicant's presentation, the Applicant informed the Hearing Officer that the property was owned by Jay H. Boughton, who was admitted to the bar in 1870. Upon relocating to Fort Collins in the late nineteenth century, Mr. Boughton served as the county attorney, the county judge, the President of the Board of Education and also served as an alderman and member of the Fort Collins City Council.
9. The Hearing Officer finds that the problems and issues of substandard lot width, and flag lots in generally, are adequately addressed and resolved in this case.
10. The Subject Property is located within a unique block that has already been subdivided and developed with rear dwellings and flag lots, unlike any other block in the immediate neighborhood of the Subject Property.
11. Based on testimony provided at the public hearing and a review of the materials submitted to the Hearing Officer in this case, the Hearing Officer concludes that the Modification of Standard (for Section 4.8(E)(1) of the Land Use Code) meets the applicable requirements of Section 2.8.2(H) of the Code. Specifically, the Hearing Officer finds as follows:
  - a. The requested Modification of Standard is not detrimental to the public good.
  - b. The Modification satisfies Section 2.8.2(H)(1) of the Code – the Plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested.

### DECISION

Based on the findings set forth above, the Hearing Officer hereby enters the following ruling:

1. The Request for Modification of Standard 4.8(E)(1) is approved for the Subject Property, subject to the following conditions:
  - a. The Modification shall be applicable to the Subject Property exclusively.
  - b. The Applicant shall submit a PDP within one (1) year following the date of this decision. If Applicant fails to submit a PDP to the City within said one (1) year period, this Modification shall automatically expire in accordance with Section 2.8.2(K) of the Land Use Code.

c. If the Applicant submits a PDP to City Staff within one (1) year of this decision, the same shall, consistent with the Plan, propose not more than two (2) single family detached lots.

d. The PDP shall be reviewed against the applicable District standards set forth in Division 4.8 of the Code and all applicable General Development Standards set forth in Article 3 of the Code, including but not limited to the Historic and Cultural Resource Standards set forth in Section 3.4.7 of the Code (“Historic and Cultural Resources”).

e. The PDP shall contain a note requiring that any future single family dwelling unit located on Parcel 1 (the proposed flag lot) will be required to have a fire sprinkler system installed, which system shall be reviewed and approved in advance by an authorized representative of the Poudre Fire Authority.

f. The PDP shall contain a note requiring that any and all future exterior improvements to the Subject Property, including but not limited to the existing single family home located on Parcel 2 and the barn/summer house located on Parcel 1, shall be required to obtain a report of acceptability from the City’s Landmark Preservation Commission.

g. As the Subject Property is designated on the National Register of Historic Places, the Subject Property remains subject to all requirements and provisions of Chapter 14 of the Fort Collins Municipal Code.

2. For the limited purpose of any subsequent review of the PDP submitted by the Applicant for the Subject Property, the dimensional lot width standard set forth in Land Use Code Section 4.8(E)(1), which requires a minimum lot width of forty feet (40’), shall be amended to allow for a minimum lot width of twenty seven feet (27’). This modification to the lot width standard shall be applicable to Parcel 1 only, as shown in the conceptual Plan reviewed at the hearing.

DATED this 16<sup>th</sup> day of December, 2014.



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Marcus A. McAskin  
Hearing Officer



HEARING DATE December 3, 2014

STAFF Mapes

## ADMINISTRATIVE HEARING

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**PROJECT:** Boughton House Subdivision Modification of Standard  
#MOD140002

**APPLICANT/  
OWNER:** Randy Everitt  
113 N. Sherwood St.  
Fort Collins, CO 80524

### PROJECT DESCRIPTION:

This is a request for a stand-alone Modification of a standard in the Neighborhood Conservation Medium Density zone district, Land Use Code Section 4.8(E)(1), which requires at least 40 feet of lot width. The request is part of a proposal to subdivide an existing large lot in a manner that would create a new lot 27 feet wide in the front portion, widening to 40 feet and more in the rear portion (a "flag lot") with a narrow driveway portion (the "flagpole") leading back to a wider portion (the "flag").

The property is a historic single family residential property located at 113 North Sherwood Street, in the older West Side Neighborhood near Downtown. The property contains an accessory barn building with habitable space in the rear of the lot, and a root cellar building. The existing house would remain on one of the lots. The barn building would remain on the other lot to enable separate sale and conversion to a single family dwelling. The house and the barn each have their own driveway access.

If the Modification is approved, the applicant would then submit a Project Development Plan (PDP) application to replat the property and provide a site plan.

If approved, the stand-alone Modification is valid for one year by which time a Project Development Plan must be submitted, incorporating the Modification into actual subdivision plans.



## LOCATION MAP



## RECOMMENDATION:

Approval.

## EXECUTIVE SUMMARY:

Staff has evaluated the request based on required findings under Section 2.8 of the Land Use Code governing Modification decisions.

Staff finds that the problems and issues of substandard lot width, and flag lots generally, are adequately addressed and resolved in this case. Staff findings are largely a function of the unusual 31,000-square-foot property, and its setting on a unique block face that has already been divided and developed with rear dwellings and flag lots, unlike any other block in the neighborhood.

Key issues identified by staff include:

- *Historic property.* The property is listed in the National Register of Historic Places. Because it is a highly significant historic resource, the future PDP would include notes on a site plan to limit and guide any future construction by owners of the two newly separated parts of the property (particularly new garage or storage space) so that it would not adversely affect the integrity of the historic property.
- *No physical changes.* The existing buildings and other improvements will all remain. Any future changes to the property could occur in like manner with or without the subdivision of the lot.
- *Utility access to the rear building.* Utilities have been found to be workable on the new flag lot.
- *Transportation access to the rear building.* Reasonable access to the barn building on the flag lot exists historically, and would remain as-is.
- *Emergency access to the rear building.* Emergency access to the barn building can be resolved by installation of a fire sprinkler system in lieu of standard fire truck access.

## COMMENTS:

### **Background**

The property is known as the historic Boughton House property, and is a prominent historic resource in Fort Collins. The large Queen Anne style house was built in 1894, with the barn/summer house building and root cellar building added within a decade. The property includes two gravel driveways, one to the main house and one to the barn building, and mature trees and landscaping.

Its importance to the heritage of the city, county, and state is recognized by its being listed in the National Register of Historic Places. That listing does not constrain the owner from making changes to the property as long as no federal monies are involved.

Any exterior alterations to the historic buildings would be reviewed administratively by staff and the chair of the Landmark Preservation Commission for compliance with the Secretary of the Interior's Standards and provisions in Chapter 14 of the City's Municipal Code.

Surrounding zoning and land uses are as follows:

Direction	Zone District	Existing Land Uses
North	N-C-M, Neighborhood Conservation Medium Density District	Single-family residences including second dwellings behind the main houses
South	N-C-M	Single-family residences
East	N-C-M	Single-family residences
West	N-C-M	Single-family residences

#### **REQUEST FOR MODIFICATION:**

The applicant requests a Modification of a Dimensional Standard in the N-C-M, Neighborhood Conservation Medium Density District which states:

**“ 4.8(E) *Dimensional Standards.***

(1) Minimum lot width shall be forty (40) feet for each single-family and two-family dwelling and fifty (50) feet for each other use. ”

The request is for a lot 27 feet in width along the street frontage, extending 125 toward the rear where the lot would widen to 40 feet. The 40-foot portion would extend 65 feet toward the rear before widening to 115 feet. The 115-foot portion would extend 82 additional feet toward the rear. Total lot depth is 272 feet. Average lot width would be 56 feet. The two proposed lots in the proposed subdivision would each be over 15,000 square feet in size, far in excess of the required minimum lot size of 5,000 square feet. The lot with the existing house would be 61 feet wide. Attachment 1 is a sketch plan of the proposed lot subdivision.



## **COMPLIANCE WITH APPLICABLE LAND USE CODE STANDARDS:**

### **Land Use Code Modification Criteria**

Section 2.8 of the Land Use Code governs Modifications, with relevant criteria in Section 2.8(H) as follows:

“The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.”

Staff finds that the request would not be detrimental to the public good, and meets (1) and (4) above. Staff evaluation regarding each of these criteria is discussed below.

## Staff Evaluation of the Request

**2.8.2(H) Public Good.** Staff finds that the Modification, and the subdivision enabled by the Modification, would not be detrimental to the public good. The main considerations identified by staff specifically related to lot width are:

- *The prevailing, familiar pattern of houses and yards facing streets which characterizes the neighborhood.* In this case, staff finds no effect on the existing pattern due to the proposed lot width, because the existing development will simply remain. This consideration would be much different if the lot was being created in order to build a new house on it.
- *Adequate room for utilities.* In this case, staff has consulted with the utility providers and utilities are workable on the proposed flag lot.
- *Adequate emergency access.* In this case, a fire sprinkler system will be required in the future residence in the rear of the property, which suffices in lieu of standard access dimensions for emergency vehicles.
- *General access.* In this case, the new flag lot in question would continue to use the existing driveway that has existed in association with the barn building for over 100 years. This allocation of lot width for driveway access is a unique situation different from most other lots in the zone district, which have their access from alleys and allocate their width to houses and yards. In this case, the difference between 27 feet and 40 feet does not affect access.

In addition to considerations specifically related to the lot width Modification, staff considered overall implications of the proposed subdivision in totality, since the Modification enables the subdivision. Overall considerations are:

- *Two different owners of severed parts of the historic property.* Two different owners of separate parts of the whole may or may not share any interest in the integrity of the historic property as such. A future owner could be more interested in privacy between the two parts. To address this aspect of the proposal, the PDP site plan would contain notes to require Landmark Preservation Commission approval of any new construction, and define open sight lines as appropriate. Whether this issue would become a problem is a speculative question, and staff finds that notes on the PDP site plan can adequately mitigate potential detriment to the public good in this regard.
- *Creation of a new residence located 210 feet from the street it faces.* This unusual relationship of a residence to a street was considered by staff. In this case, the barn building has existed for over one hundred years and the subdivision would not change the relationship. The building could be converted to a dwelling (a carriage

house) without the subdivision. Thus staff finds no detriment to the public good in this regard resulting from the subdivision.

Staff's consideration included the adjacent context. This particular block is unique, and the flag lot for a rear residence is consistent with the adjacent context in this case. To wit, every property on the block face has a second dwelling in the rear yard. The property next door was divided to create a lot in the rear yard, with a narrow driveway access across the front lot. Two other properties on the block are flag lots. The original north-south alley behind the subject property was largely abandoned in the past as part of the many changes in rear lot areas. The two proposed lots involved in the Modification would still be larger than most parcels on the block and would provide ample space far in excess of minimum lot size requirements. Attachment 2 shows the block context.

- *Likely introduction of a fence.* Staff considered whether the subdivision would likely introduce a fence marking the division of the historic property into two parts. Because the barn building could be converted to a carriage house dwelling as noted above without the subdivision, same delineation between the two dwellings could be added. Staff concludes that the subdivision does not create a significant issue. Furthermore, any owner can place fences up to six feet tall for any reason without any review or permits. Thus, with or without the subdivision, fencing can be placed on the historic property and is not considered a detriment to the public good.
- *Likely need for more garage or storage buildings.* Staff considered whether the subdivision would create a situation in which two properties will have more limited garage and storage space as compared to the current intact property which has ample garage and storage space. Two properties with two separate households creates the potential to generate new needs for these functions, which could lead to construction of additional buildings that would alter the historic property.

Like several other considerations, this could arise regardless of the subdivision, because of the potential for converting the barn to a carriage house dwelling. Nevertheless, staff believes that a separately owned household is likely to increase pressure for additional construction that could detract from the historic property. To address this issue, the PDP site plan will contain notes as mentioned previously, requiring Landmark Preservation Commission approval of any new buildings, and it will define open sight lines to remain free of new construction. With these notes, staff finds no detriment to the public good in this regard.

**2.8.2(H)(1) 'Equal or Better'.** Staff finds that the Modification, and the subdivision enabled by the Modification, would accomplish the purposes of 40-foot width lot width as well as a hypothetical plan providing the additional 13 feet needed for a 40-foot width

in the driveway portion of the lot. The driveway access functions in essentially the same manner with 27 feet as it would with 40 feet.

Any additional width in the front portion of the lot would consist of additional landscape area along the driveway. Staff finds that the existing driveway and landscaping are as good as a driveway lined with additional landscaping. In other words, the fundamental circumstances of a flag lot with a rear building are the same whether the lot is 27 or 40 feet wide at the street frontage.

Another consideration under this criterion is that the proposed plan can be compared to a plan that meets the standard by keeping the lot as-is and converting the barn building to a carriage house dwelling without subdividing. The proposed plan would be as good as that plan, because it would look and function essentially the same, with the same existing development to remain.

Furthermore, all of the findings under 'Public Good' above, also apply to this 'Equal or Better' standard.

**2.8.2(H)(2) 'Defined Community Need'.** *Staff finds that this criterion is not applicable. Neither the Modification, nor the subdivision enabled by the Modification, would substantially alleviate an existing, defined and described problem of city-wide concern or address an important community need. Specifically, staff does not find that the proposal promotes the integrity or significance of the historic property or the preservation of historic buildings. The property and buildings could continue to be preserved as an intact single property.*

**2.8.2(H)(3) 'Exceptional situations...or conditions...which would result in unusual and exceptional practical difficulties...not caused by the applicant'.** *Staff finds that this criterion is not applicable. Neither the Modification, nor the subdivision enabled by the Modification, is warranted by exceptional physical conditions. The property and buildings could continue to be maintained as an intact single property. If converting the barn to a dwelling is in fact the best way to preserve it, the conversion could happen as a carriage house on the intact property rather than splitting the lot and selling it. The applicants' desire to split the lot creates the conditions requiring the Modification.*

**2.8.2(H)(4) 'Nominal and Inconsequential'.** Staff finds that the difference between 27 and 40 feet of width in the driveway portion of the proposed flag lot is inconsequential when considered from the perspective of the entire development plan. The overall plan would function in essentially the same way regardless of the 13 feet of difference along the driveway. If the Modification is approved, notes on the site plan would ensure visibility of the rear building from the street and sidewalk.

**2.8.2(H)(4) ...‘will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.’.** *Staff finds that this criterion is not applicable. The Modification request and proposal to split this historic property do not advance any purposes of City Plan as listed in the criterion.*

**NEIGHBORHOOD MEETING:**

No neighborhood meeting was required; none was held.

**FINDINGS OF FACT AND CONCLUSIONS:**

In evaluating the request for Modification of Standard, staff makes the following findings of fact and conclusions:

- A. The Modification of Standard to Section 4.8(E)(1) to allow 27 feet of lot width would not be detrimental to the public good because the request involves existing development that would remain as-is, with no new negative impacts; and specific aspects of lot width such as utility and vehicle access are workable as proposed.
- B. The request meets the requirements of Section 2.8.2(H)(1) because the driveway portion of the proposed flag lot would function as well as a plan providing the additional 13 feet of width to meet the standard. The fundamental circumstances of a flag lot with a rear building are the same whether the lot is 27 or 40 feet wide at the street frontage. Any additional width in the narrow front portion of the lot would consist of additional landscape area along the driveway. Staff finds that the existing driveway and landscaping are as good as a driveway lined with additional landscaping. Furthermore, the proposed plan is equal to a plan to convert the barn building to a dwelling without subdividing and selling it, because it would look and function essentially the same, with the same existing development to remain in either case.
- C. The request meets the requirements of Section 2.8.2(H)(4) because the difference between 27 and 40 feet of width in the driveway portion of the proposed flag lot is inconsequential when considered from the perspective of the entire development plan. The overall plan would function in essentially the same way regardless of the 13 feet of difference along the driveway, which would not be needed to serve any particular purpose.

**RECOMMENDATION:**

Staff recommends approval of Boughton House Subdivision Modification of Standard #MOD140002

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**ATTACHMENTS:**

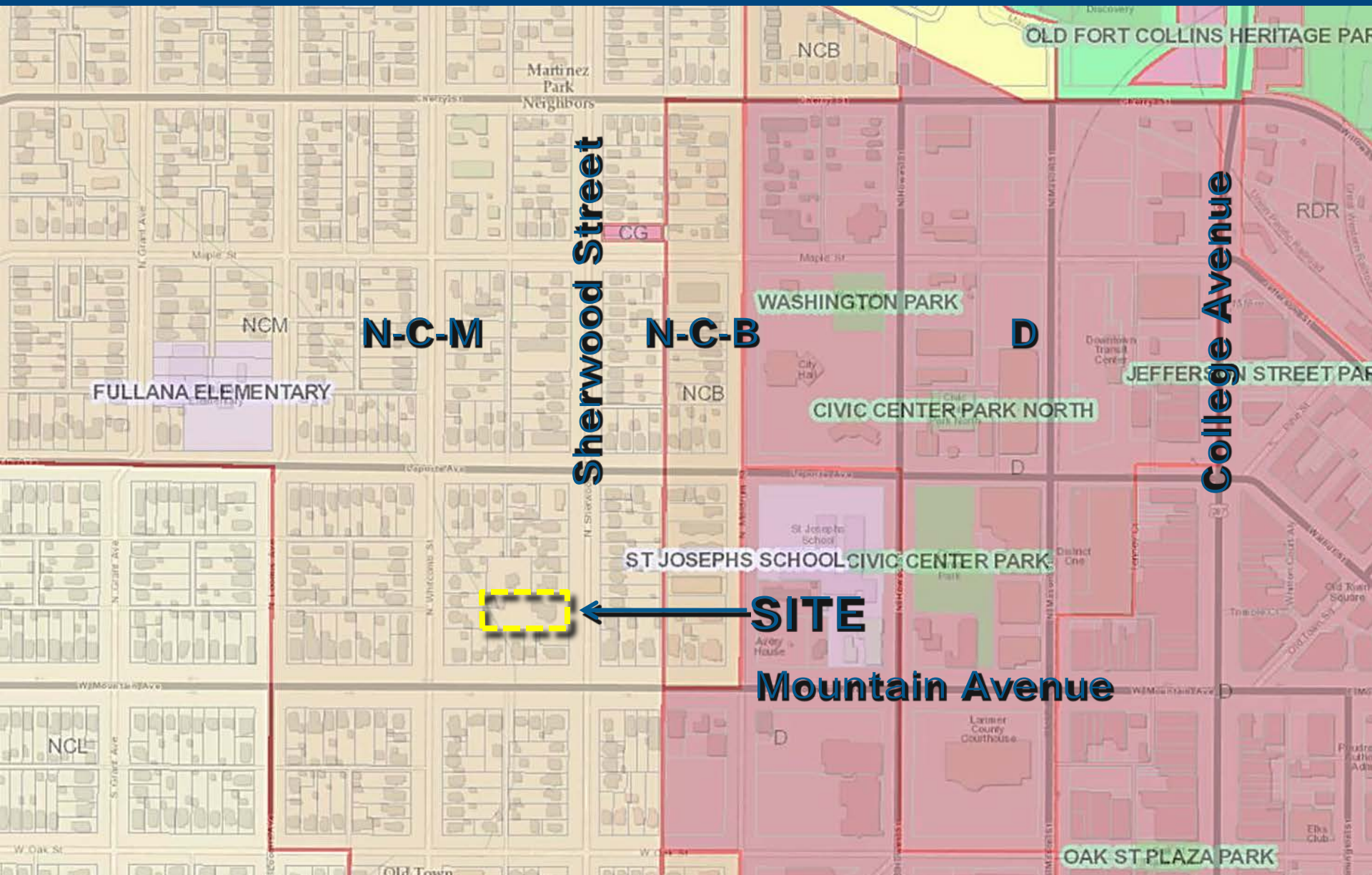
- 1 Sketch Plan
- 2 Block Context Plan

# Boughton House Modification of Standard

113 North Sherwood Street

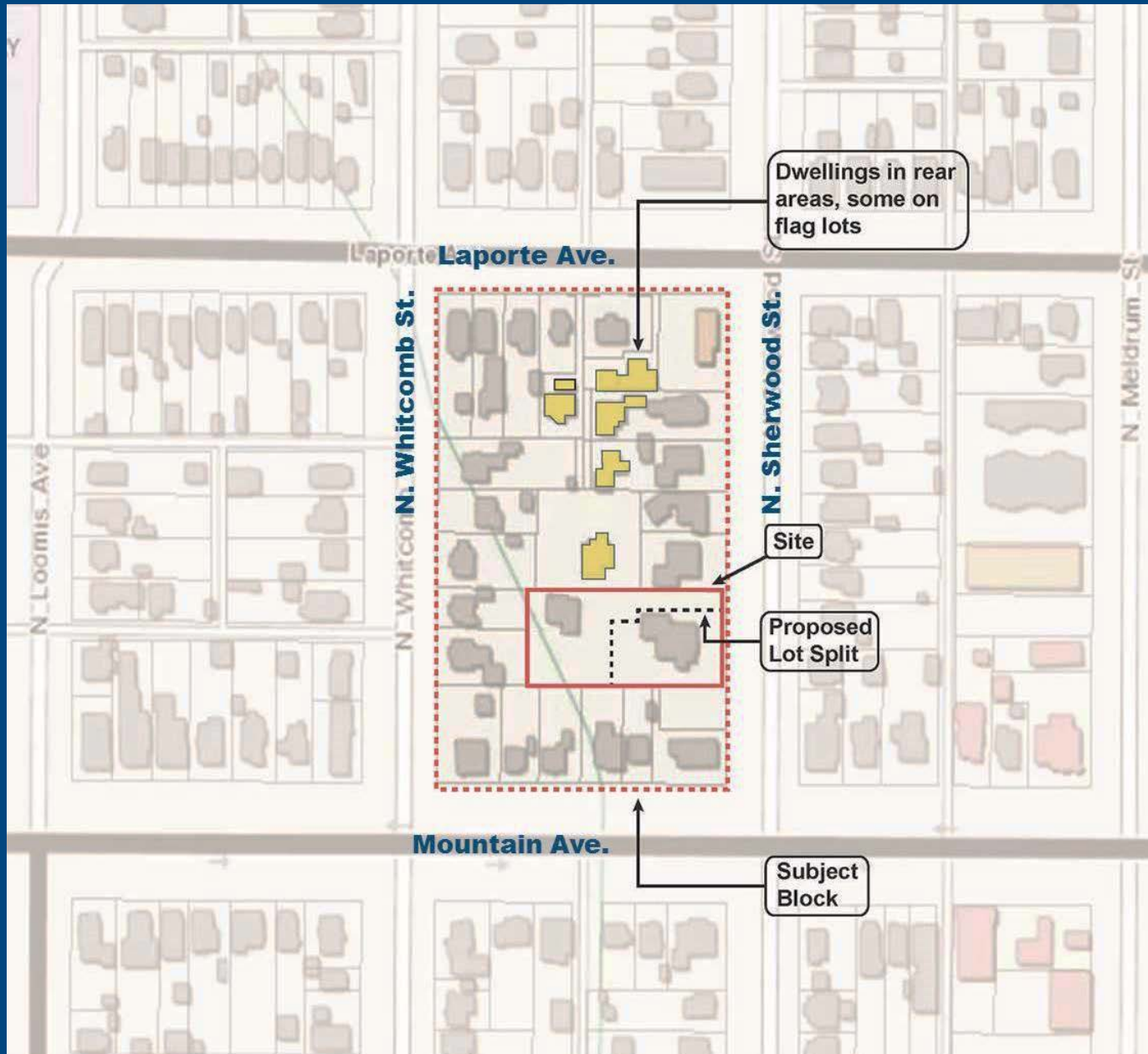


# Zoning



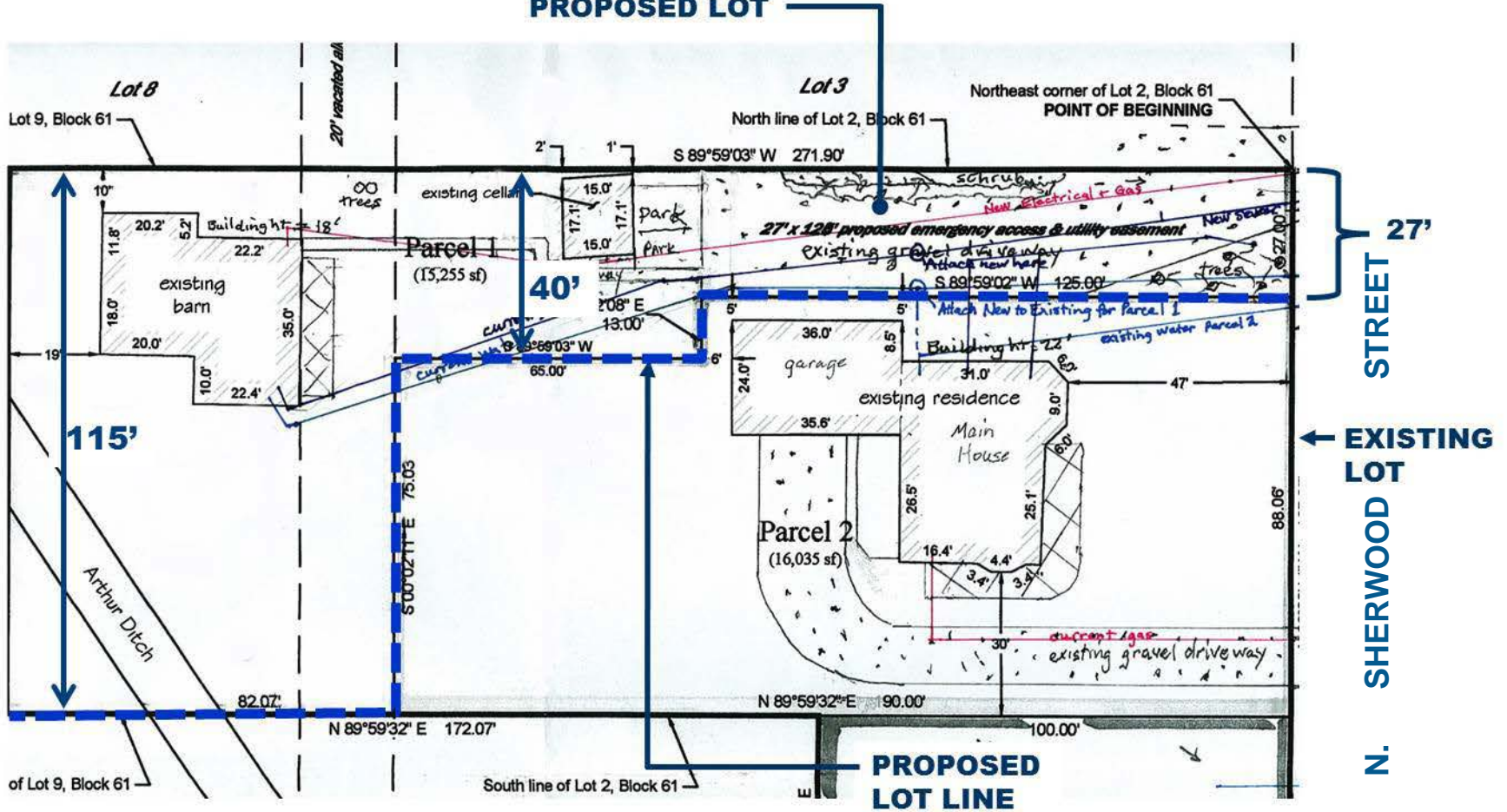


# Block Context Map



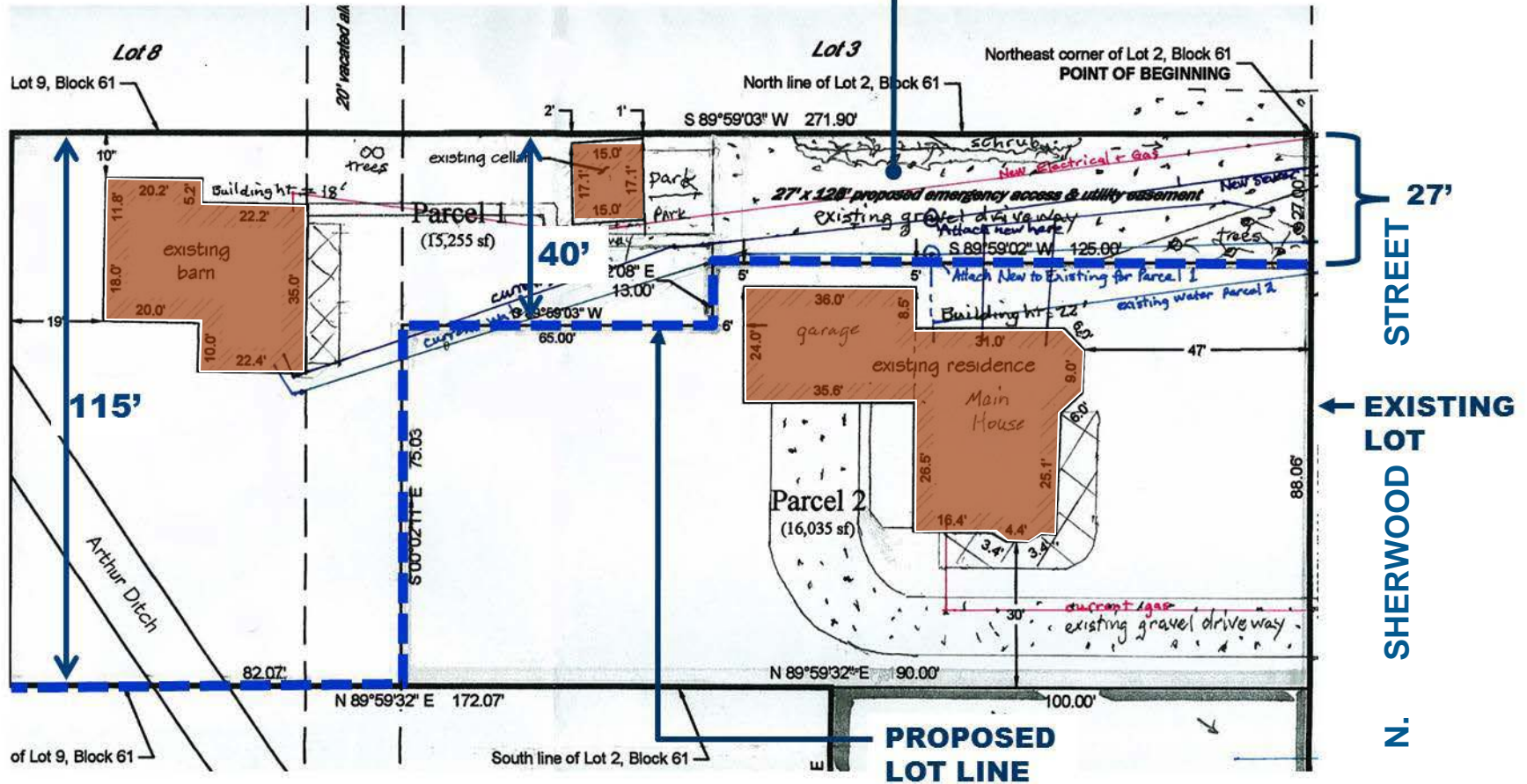
# Sketch Plan

**SUBJECT OF MODIFICATION:  
27'-WIDE PORTION OF  
PROPOSED LOT**



# Sketch Plan

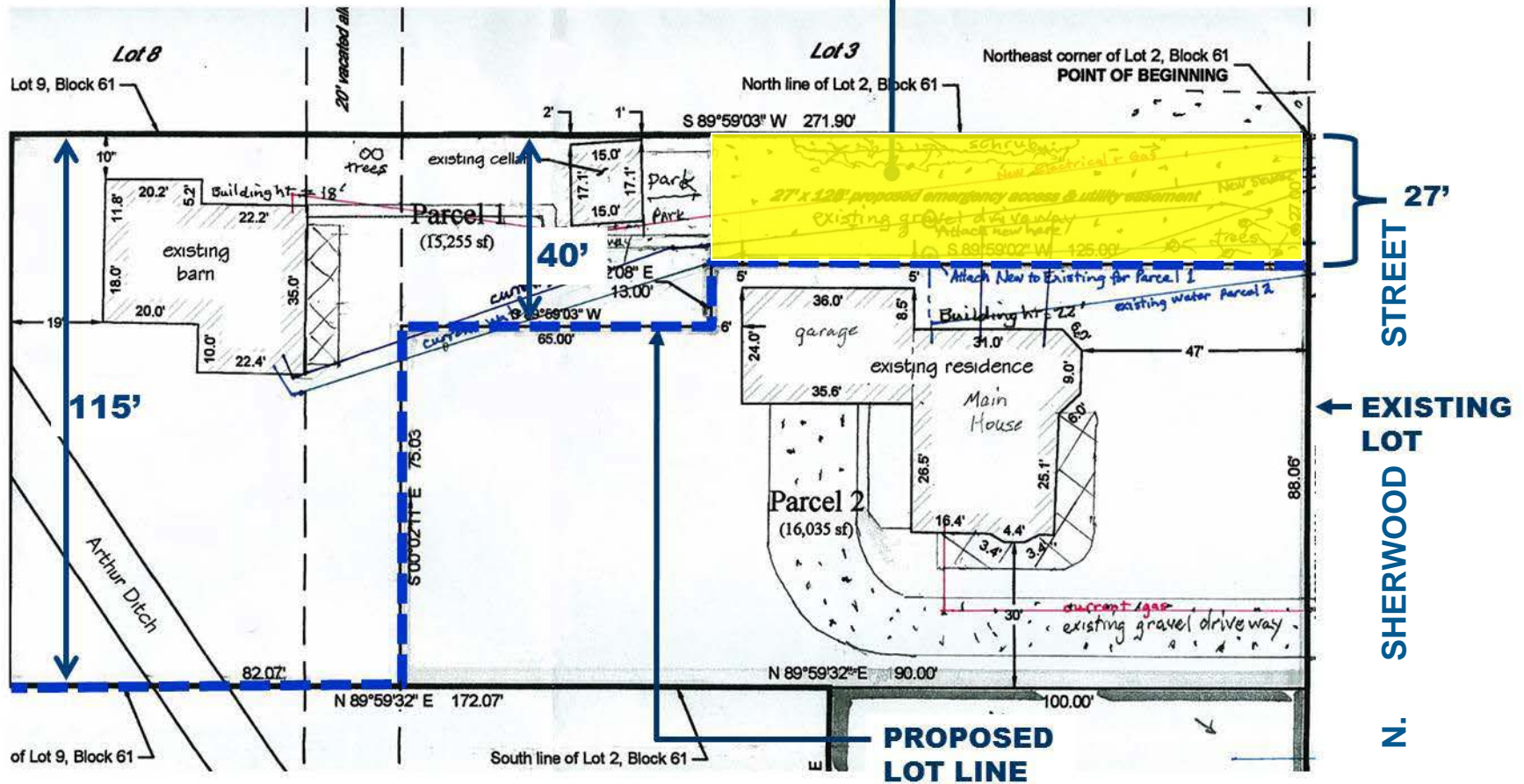
## SUBJECT OF MODIFICATION: 27'-WIDE PORTION OF PROPOSED LOT



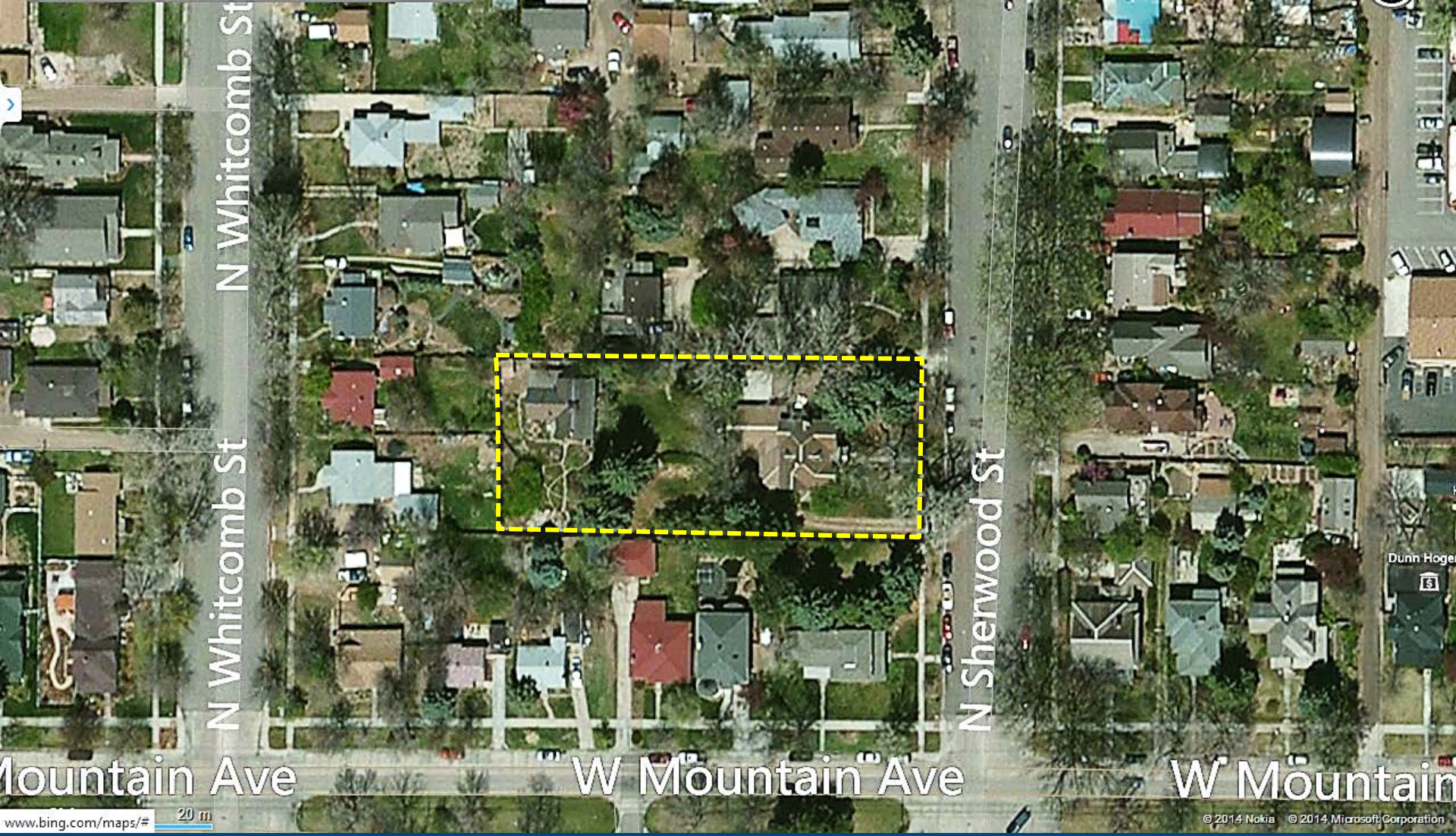


# Sketch Plan

**SUBJECT OF MODIFICATION:  
27'-WIDE PORTION OF  
PROPOSED LOT**







Mountain Ave

W Mountain Ave

W Mountain





N Sherwood St

Laporte Ave

N Whitcomb St

Mountain Ave

W Mountain Ave

50 feet 10 m











117 N Sherwood St



Exit Street View

2

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40°35'16.07" N 105°05'05.55" W elev 5006 ft eye alt 5016 ft

2.8.2(H)

# Modifications

# Staff Evaluation

2.8.2(H)

**Not Detrimental to  
Public Good**

2.8.2(H)(1)

**‘Equal or Better’**

2.8.2(H)(4)

# Nominal and Inconsequential



[illegible]

# Boughton House Subdivision Modification of Standard