

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	CONTINUED DISCUSSION OF THE APPEAL OF THE GARDEN GROVE PLANNING COMMISSION DENIAL OF TENTATIVE PARCEL MAP NO. PM-2011-000 AND VARIANCE NO. V-191-11	Date:	September 27, 2011

OBJECTIVE

To consider the appeal of the Garden Grove Planning Commission's denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11.

BACKGROUND

Proposed Project PM-2011-000 and V-191-11:

The subject property is currently an approximately 13,550 square foot lot, located on the northeast corner of Dale Street and Acacia Avenue at 8503 Acacia Avenue. The property has a General Plan Land Use Designation of Medium Density Residential and is zoned R-3 (Multiple-Family Residential). The site is currently improved with two detached existing residential dwelling units.

The applicant requested to subdivide the existing lot into two separate parcels. Lot 1 would be 4,938 square feet in area and Lot 2 would be 7,500 square feet in area. The minimum lot area is 7,200 square feet for a parcel in the R-3 zone. Thus, Lot 1 would not meet the minimum lot size requirement, as it would be 2,262 square feet short. A variance to deviate from the minimum lot area is required to approve the proposed subdivision.

Appeal of the Proposed Project:

Mr. Dinh Lai Vu, the property owner, has appealed the denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11 to City Council to consider the project. In his appeal, the appellant stated reasons of the denial being unfair. Mr. Vu is requesting that the City Council review the appeal and approve PM-2011-000 and V-191-11 to approve the subdivision and variance.

July 7, 2011: At the Planning Commission meeting, the Planning Commission concurred with Staff in not being able to make the necessary findings and therefore,

voted 5-2 to adopt Resolution No. 5741-11, to deny PM-2011-000 and V-191-11. No one from the public came forward to speak in favor of or in opposition to the project. Mr. Dinh Lai Vu, the property owner, and Mr. Leon Tran, the representative of the applicant, spoke in favor of the project.

September 13, 2011: The City Council considered the appeal of the Garden Grove Planning Commission's denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11. The applicant, Mr. Dinh Lai Vu, provided the City Council and City staff with a handout, which included an explanation of why he believes the appeal of his project should be approved. In the provided handout, the applicant included a list of six (6) properties and claimed that they are located in R-3 (Multiple-Family Residential) zones and that each has a lot size of less than 4,938 square feet. The City Council directed City staff to verify the information provided on the list of six (6) properties and voted to continue the discussion of the project to the City Council meeting on September 27, 2011. No one from the public came forward to speak in favor of or in opposition to the project.

DISCUSSION

At the direction of the City Council, Staff reviewed the six (6) properties presented by the applicant and re-reviewed the variance request as it relates to past variances and existing conditions in the community. Staff determined that one of the properties is in an adjacent City and another property is a commercially zoned lot and is used for commercial purposes. However, the other four lots are approximately 5,000 square feet in area, are zoned residential, and although they are located in subdivisions allowing for higher residential density development (small-lot subdivisions) they are similar to the lot sizes being considered under this parcel map. Therefore, these examples could be considered relative to this application for reduced lot size.

In addition, Staff also found that there have been a couple of lot size variance approvals similar to this case. These situations did have existing houses on them, were approximately 5,000 square feet in area, and applicable development standards were being met.

Along with the Resolution of denial for the appeal, City staff has provided a Resolution of approval for the appeal, which includes the required findings necessary to approve the subject Tentative Parcel Map and the Variance, along with Conditions of Approval, should the City Council vote to approve the appeal.

FISCAL IMPACT

There is no fiscal impact to the City regarding denial or approval of this appeal.

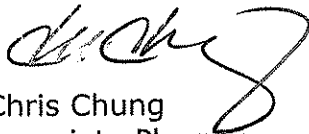
RECOMMENDATION

It is recommended that the City Council:

- Continue the discussion; and
- If the City Council determines to uphold the Planning Commission's decision, adopt the attached Resolution denying the appeal regarding Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11 in full; or
- If the City Council determines to grant the appeal, adopt the attached Resolution approving the appeal regarding Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11 in full, subject to the recommended Conditions of Approval.



SUSAN EMERY
Community Development Director



By: Chris Chung
Associate Planner

- Attachment 1: Planning Commission Staff Report dated July 7, 2011
Attachment 2: Planning Commission Resolution No. 5741-11
Attachment 3: Planning Commission Minute Excerpt of July 7, 2011
Attachment 4: Applicant's Appeal Letter dated July 25, 2011
Attachment 5: Draft City Council Resolution denying the Appeal of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11.
Attachment 6: Draft City Council Resolution approving the Appeal of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, including the Conditions of Approval.

 **Approved for Agenda Listing**


Matthew Fertal
City Manager

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.3.	SITE LOCATION: Northeast corner of Dale Street and Acacia Avenue, at 8503 Acacia Avenue
HEARING DATE: July 7, 2011	GENERAL PLAN: Medium Density Residential
CASE NO.: Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11	ZONE: R-3 (Multiple-Family Residential)
APPLICANT AND PROPERTY OWNER: Dinh Lai Vu	CEQA DETERMINATION: N/A
	APN: 133-473-09

REQUEST:

The applicant is requesting Tentative Parcel Map approval to subdivide an existing approximately 13,550 square foot lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. Also, a Variance approval to deviate from the minimum lot area for the R-3 (Multiple-Family Residential) zone.

PROJECT STATISTICS:

	Provided	Code Requirement
Lot Size		
Lot 1	4,938 S.F. (after right-of-way dedication and corner cut-off)	7,200 S.F.
Lot 2	7,500 S.F.	7,200 S.F.
Allowable Density *		
Lot 1	1 Unit	1 Unit Maximum
Lot 2	1 Unit	2 Units Maximum

* Note: The net developable area, 12,438 square feet, allows for a maximum density of three (3) units on this site.

Building Setbacks		
<u>Lot 1</u>		
North (Rear)	16'-10"	10'-0"
South (Front)	20'-4"	20'-0"
East (Interior Side)	7'-0"	5'-0"
West (Street Side)	14'-3"	10'-0"
<u>Lot 2</u>		
North (Rear)	17'-0"	10'-0"
South (Front)	20'-0"	20'-0"
East	10'-4"	5'-0"
West	5'-0"	5'-0"

BACKGROUND:

The subject property is currently an approximate 13,550 square foot lot, located on the northeast corner of Dale Street and Acacia Avenue at 8503 Acacia Avenue. The property has a General Plan Land Use Designation of Medium Density Residential and is zoned R-3 (Multiple-Family Residential). The subject property abuts R-3 zoned properties to the north, east, and across Acacia Avenue to the south, and R-1 (Single-Family Residential) zoned properties across Dale Street to the west.

The site is currently improved with two detached existing residential dwelling units. Although the current lot size is approximately 13,550 square feet, for property development considerations, the property would be subject to a 10'-0" right-of-way dedication along the westerly property line, as well as a corner cut-off dedication. This would reduce the lot size to a net developable area of 12,438 square feet. City code allows a maximum of three (3) units based on this lot size.

The applicant is requesting to subdivide the existing lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. The minimum lot area is 7,200 square feet for a parcel in the R-3 zone. Thus, Lot 1 will not meet the minimum lot size requirement, as it would be 2,262 square feet short. A variance to deviate from the minimum lot area is required to approve the proposed subdivision.

DISCUSSION:

TENTATIVE PARCEL MAP:

As previously mentioned, the applicant is proposing to subdivide the existing subject lot into two separate parcels. Lot 1 will be 4,938 square feet in area, and Lot 2 will be 7,500 square feet in area. The site has two separate dwelling units and the proposed subdivision retains one house on each lot.

For Lot 1, in order to comply with R-1 (Single-Family Residential) development standards, the applicant is proposing to demolish the existing detached two-car garage and construct a new attached two-car garage as well as provide a new driveway, from Dale Street, that is 20'-0" in depth from the property line. This will allow the development to comply with rear and side yard setbacks, rear yard open space requirements, and provide the required two open parking spaces; however, the proposed lot size of 4,938 square feet does not meet the minimum lot area of 7,200 square feet. Other than the minimum lot area, the development meets all other R-1 development standards.

For Lot 2, all existing structures on-site will remain, as there are no proposed changes. The property complies with all R-1 development standards. The lot size of 7,500 square feet meets the minimum lot area of 7,200 square feet.

Municipal Code Section 9.12.040.030.A.1 states that single-family homes in the R-2 (Limited Multiple Residential) and R-3 zones are required to comply with all zoning requirements of the R-1 zone.

VARIANCE REQUESTS:

Variance to Deviate From the Minimum Lot Area:

Title 9 of the Municipal Code requires that the minimum lot area for a property in the R-3 zone is 7,200 square feet. After a required 10'-0" right-of-way dedication along the westerly property line, and the corner cut-off, Lot 1 is proposed to be 4,938 square feet in net developable lot area. This is 2,262 square feet (31.4%) short of the minimum requirement of 7,200 square feet.

VARIANCE FINDINGS:

Exceptional Circumstances: No

There are no exceptional or extraordinary circumstances pertaining to the site that warrant approval of a Variance. There are no other properties in proximity to the subject site zoned R-1, R-2, or R-3 that are less than 5,000 square feet in lot area. This development, based on lot size, would be uncharacteristic to other properties in the vicinity.

Substantial Property Right: No

The granting of the Variance would give the subject property owner a special privilege over other property owners in the area in regard to the minimum lot area requirement. Although there are a couple legal nonconforming residential properties that range in size from 6,095 to 6,773 square feet, within the proximity of the subject site, there are none that are less than 5,000 square feet in area. The vast majority of the properties do meet the minimum lot area requirement of 7,200 square feet. The proposed Lot 1 is 4,938 square feet, which would be 2,262 square

feet short of the minimum requirement of 7,200 square feet. This deviation is not commonly found in R-3, or even R-2, zoned properties that are located in the vicinity of the subject property.

Materially Detrimental: No

Approval of the Variance request would allow a deviation from the minimum lot area requirement to permit a 4,938 square foot lot, Lot 1, which is 2,262 square feet short of the minimum requirement of 7,200 square feet. Although, the proposed deviation does not appear to be materially detrimental to the public welfare or injurious to the structure or to the future occupants of the site due to not complying with the minimum lot area requirement, it still remains well short of the minimum lot area requirement and is not in keeping with the consistency of neighboring lot sizes for this area.

Adverse Effect on the General Plan: Yes

Granting approval of the proposed Variance would adversely affect the General Plan of the City of Garden Grove. One of the goals of the General Plan is to encourage the development and promote the production of safe housing within the community. The proposed subdivision does not comply with the goals of the General Plan. For example, two policy goals from the City's adopted General Plan, which are as follows: assure that the type and intensity of land use shall be consistent with that of the immediate neighborhood; and new development shall be similar in scale to the adjoining residential neighborhood to preserve its character, are not reflected in the proposed tentative parcel map noting the smaller parcel is not in size or scale to surrounding properties, and the type of subdivisions is not of similar nature to surrounding subdivided parcels. Therefore, granting of the Variance would not be in keeping with the spirit and intent of the General Plan.

RECOMMENDATION:

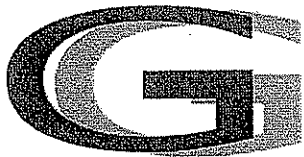
Staff recommends that the Planning Commission take the following action:

- Deny Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11.



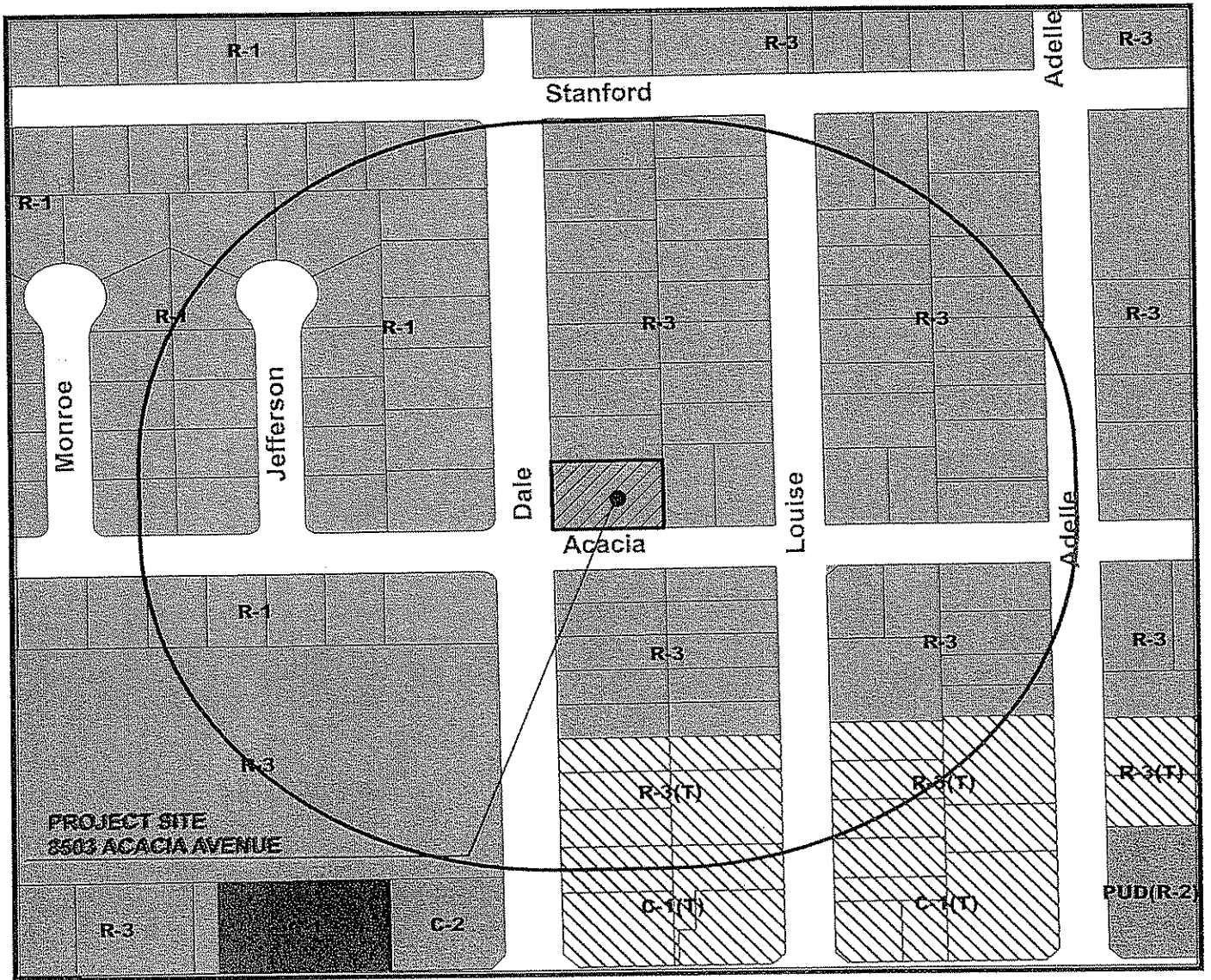
KARL HILL
Planning Services Manager

By: Chris Chung
Associate Planner





GARDEN GROVE

TENTATIVE PARCEL MAP NO. PM-2011-000 V-191-11



LEGEND

 PROJECT SITE - 8503 ACACIA AVENUE

 500 FEET RADIUS



0 125 250 500 750 Feet

NOTES

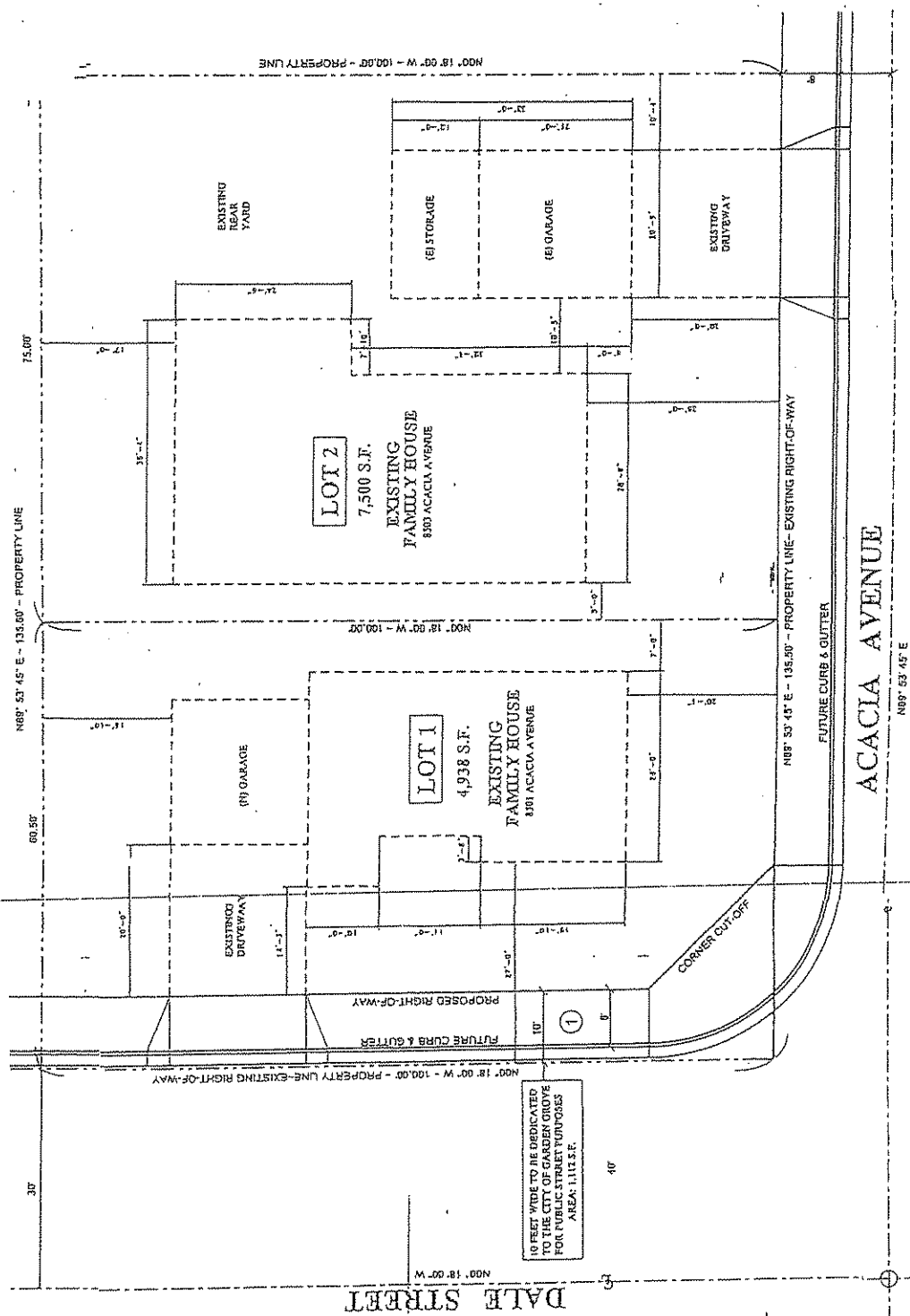
1. GENERAL PLAN: MEDIUM DENSITY RESIDENTIAL
2. ZONE: R-3 (MULTIPLE-FAMILY RESIDENTIAL)

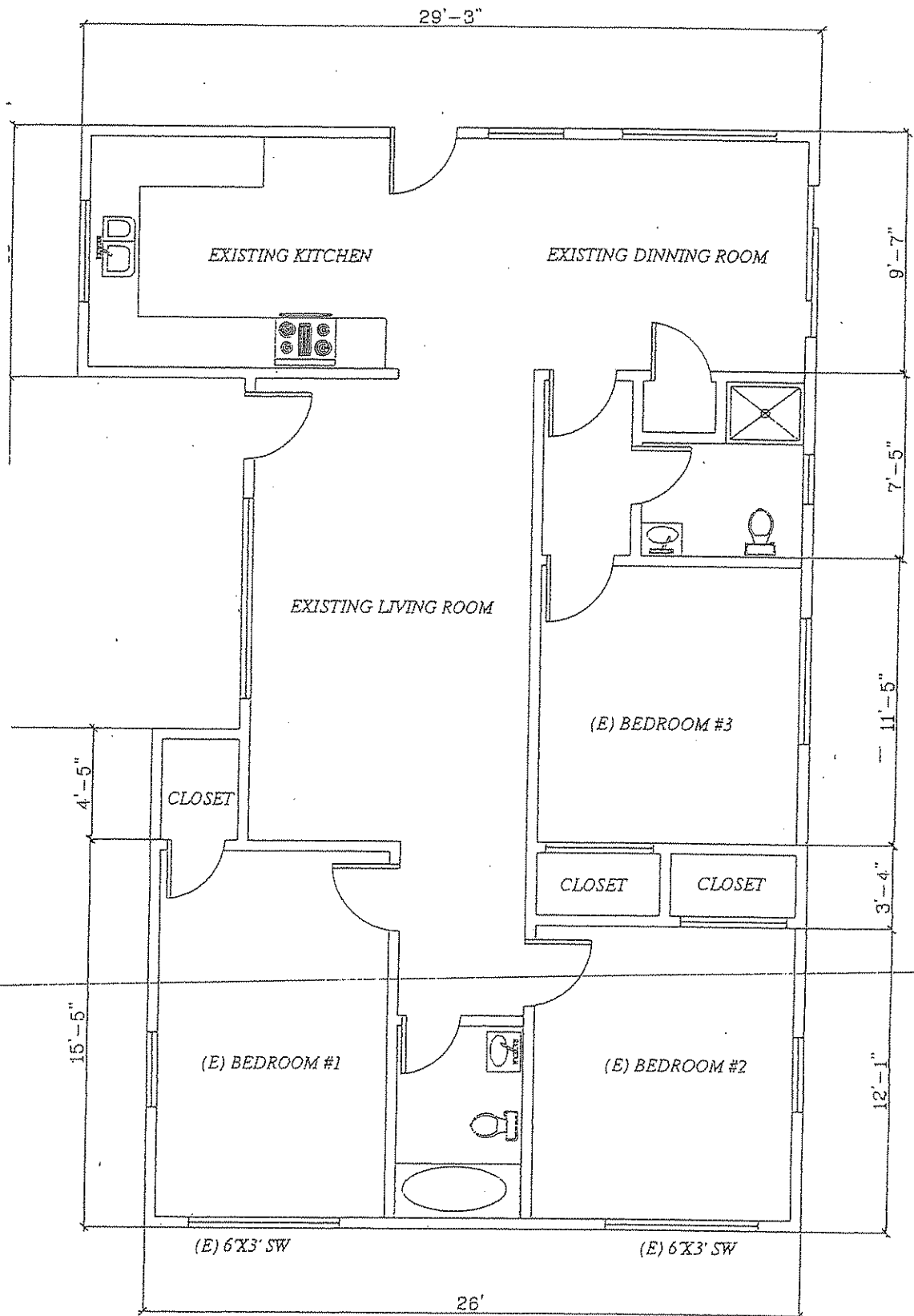
CITY OF GARDEN GROVE
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
GIS SYSTEM
JULY 2011

P:\PLANNING\EXHIBITS\MAPS2010

TENTATIVE PARCEL MAP

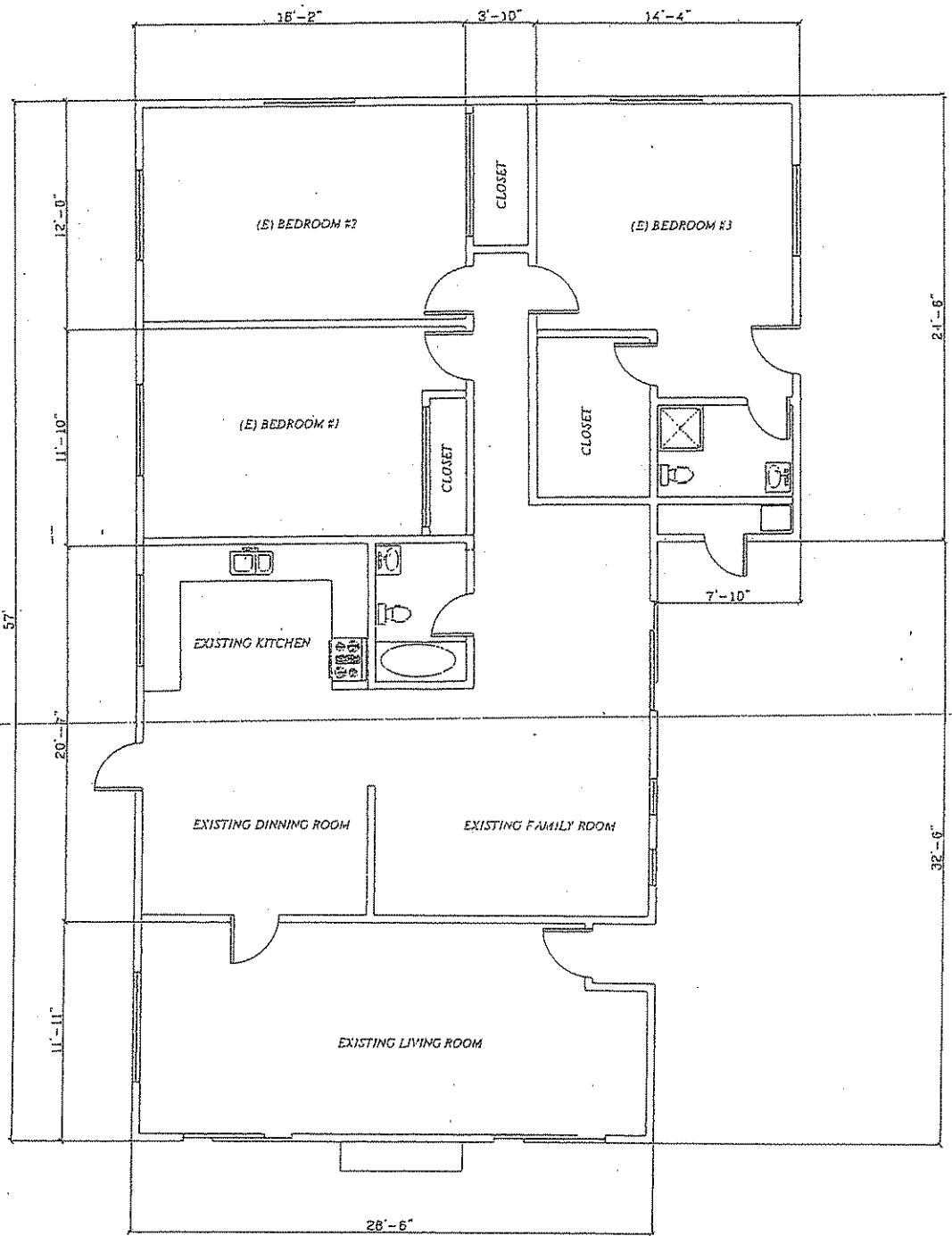
IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA
BEING SUBDIVISION OF THE PORTION OF T LOT 1, TRACT NO. 807, AS SHOWN ON THE MAP THEREOF
RECORDED IN BOOK 32 PAGE 5 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, CALIFORNIA



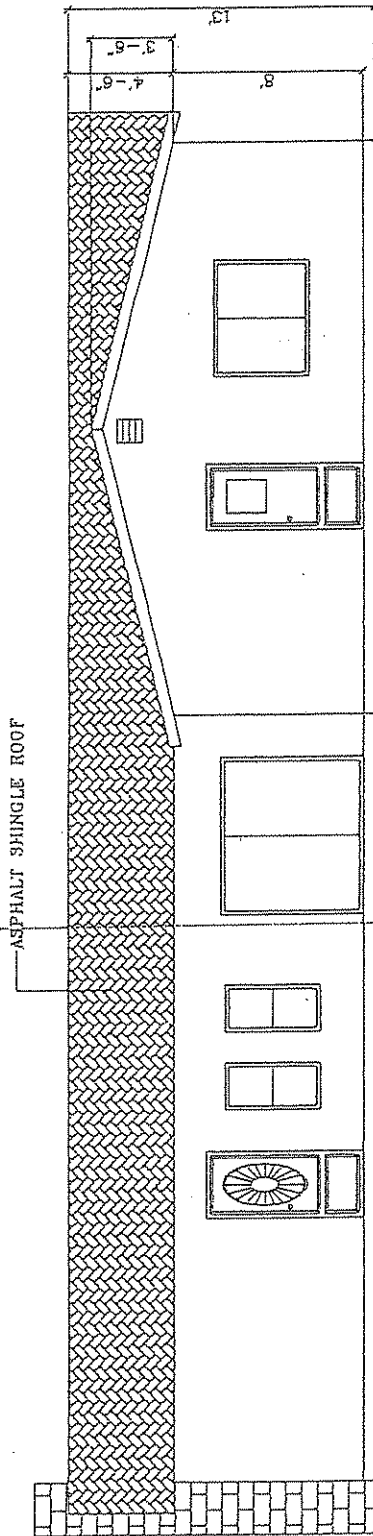


EXISTING FIRST HOUSE FLOOR PLAN

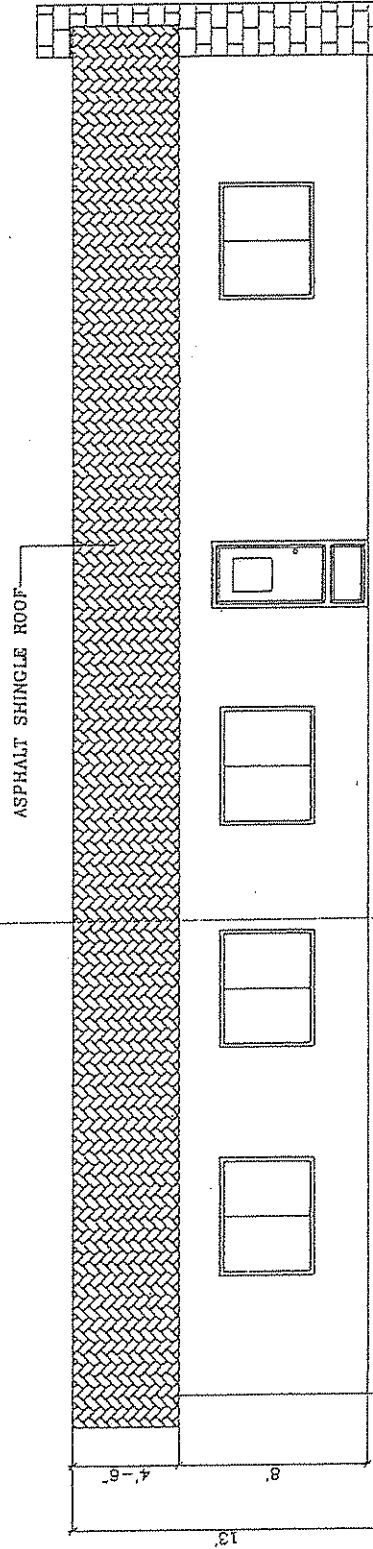
$\frac{1}{4}" = 1'$



EXISTING SECOND HOUSE FLOOR PLAN
 $\frac{1}{4}" = 1'$

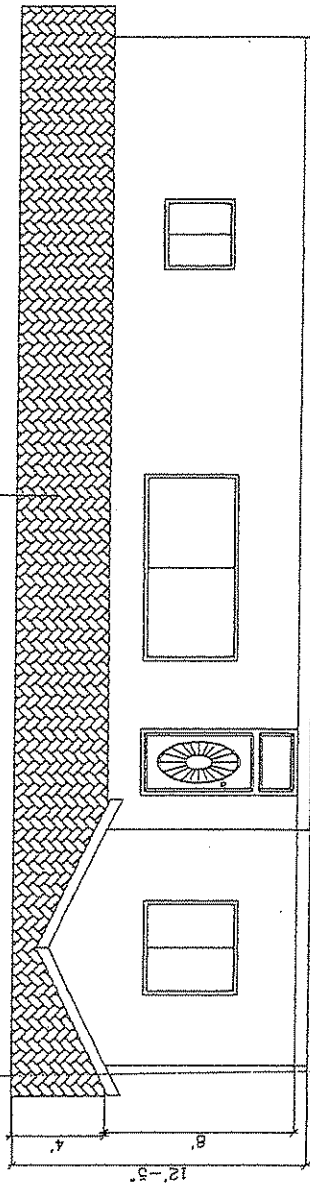


FRONT ELEVATION SECOND HOUSE
3/16" = 1'

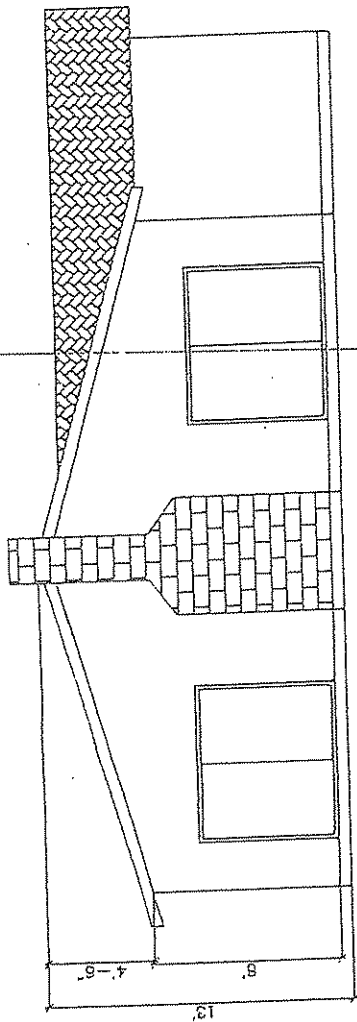


REAR ELEVATION SECOND HOUSE
3/16" = 1'

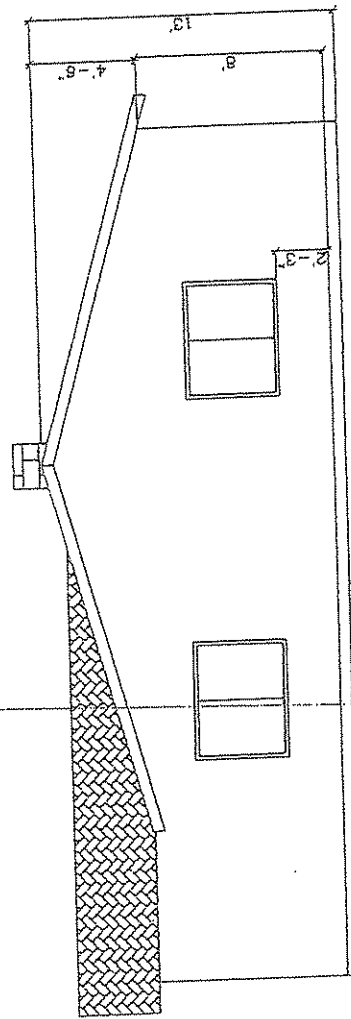
ASPHALT SHINGLE ROOF



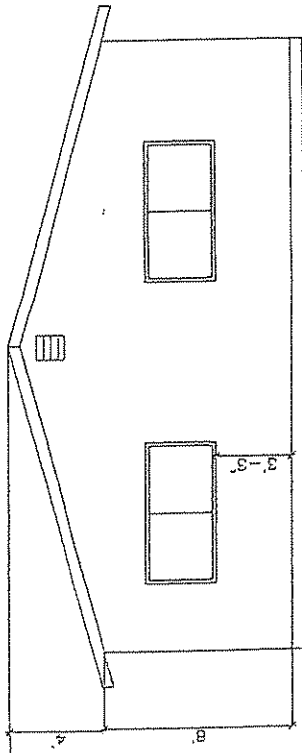
FRONT ELEVATION FIRST HOUSE
3/16" = 1'



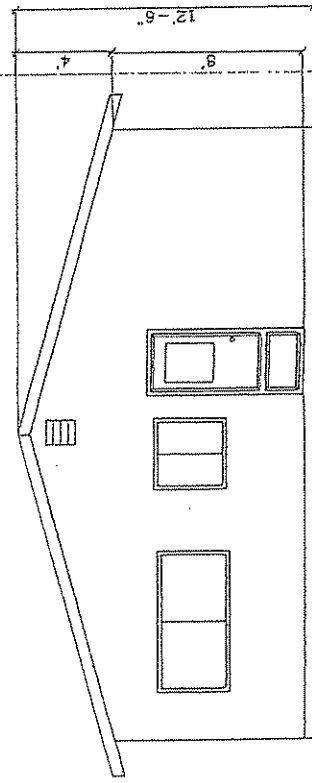
LEFT ELEVATION SECOND HOUSE
 $\frac{3}{16}'' = 1'$



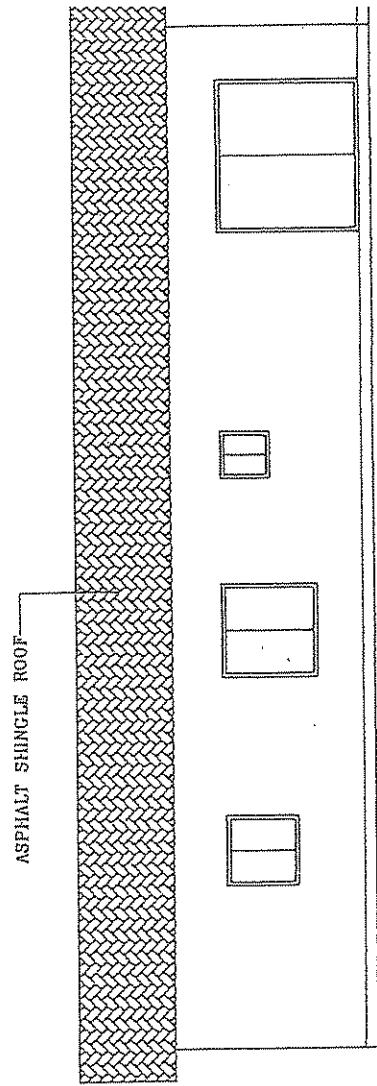
RIGHT ELEVATION SECOND HOUSE
 $\frac{3}{16}'' = 1'$



RIGHT ELEVATION FIRST HOUSE
 $\frac{3}{16}'' = 1'$



LEFT ELEVATION FIRST HOUSE
 $\frac{3}{16}'' = 1'$



REAR ELEVATION FIRST HOUSE
 $\frac{3}{16}'' = 1'$

RESOLUTION NO. 5741-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING TENTATIVE PARCEL MAP NO. PM-2011-000 AND VARIANCE NO. V-191-11.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in a regular session assembled on July 7, 2011, hereby denied Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11 for a property located on the northeast corner of Dale Street and Acacia Avenue, 8503 Acacia Avenue, Assessors Parcel No. 133-473-09.

BE IT FURTHER RESOLVED in the matter of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Dinh Lai Vu.
2. The applicant is requesting Tentative Parcel Map approval to subdivide an existing approximately 13,550 square foot lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. Also, a Variance approval to deviate from the minimum lot area for the R-3 (Multiple-Family Residential) zone.
3. The property has a General Plan designation of Medium Density Residential and is zoned R-3 (Multiple-Family Residential). The site is currently improved with two existing residential dwelling units.
4. Existing land use, zoning, and General Plan designation of property in the vicinity of the subject property have been reviewed.
5. Report submitted by the City staff was reviewed.
6. Pursuant to a legal notice, a public hearing was held on July 7, 2011, and all interested persons were given an opportunity to be heard.
7. The Planning Commission gave due and careful consideration to the matter during its meeting on July 7, 2011; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Sections 9.32.030 are as follows:

FACTS:

The subject property is an approximately 13,550 square foot lot, located on the northeast corner of Dale Street and Acacia Avenue at 8503 Acacia Avenue. The property has a General Plan Land Use Designation of Medium Density Residential and is zoned R-3 (Multiple-Family Residential). The subject property abuts R-3 zoned properties to the north, east, and across Acacia Avenue to the south, and R-1 (Single-Family Residential) zoned properties across Dale Street to the west.

The site is currently improved with two detached existing residential dwelling units. Although the current lot size is approximately 13,550 square feet, for property development considerations, the property would be subject to a 10'-0" right-of-way dedication along the westerly property line, as well as a corner cut-off dedication. This would reduce the lot size to a net developable area of 12,438 square feet. City code allows a maximum of three (3) units based on this lot size.

The applicant is requesting to subdivide the existing lot into two separate parcels. Lot 1 will be 4,938 square feet in area. The minimum lot area is 7,200 square feet for a parcel in the R-3 zone. Thus, Lot 1 will not meet the minimum lot size requirement, as it would be 2,262 square feet short.

FINDINGS AND REASONS:**TENTATIVE PARCEL MAP:**

The proposal does not meet the required findings under section 9.40.060 (Tentative Maps – Findings Required).

1. The map is not consistent with the City's General Plan in that Lot 1 of the subdivision does not meet the minimum lot area requirement of Title 9 of the Municipal Code, and therefore is not consistent with the State Subdivision Map Act.
2. The design of the proposed two-lot subdivision is not consistent with the R-3 (Multiple-Family Residential) zone, Title 9 of the City of Garden Grove Municipal Code, and the General Plan provisions for location, proximity to similar uses, lot width, and overall depth.
3. The site is not physically suitable for the existing development and does not comply with the spirit and intent of the R-3 (Multiple-Family Residential) zone and Title 9 of the City of Garden Grove Municipal Code.
4. The design of the subdivision is likely to cause problems to the public health, safety, and welfare.

5. The design and improvements of the subdivision are not suitable for the existing site improvements and the subdivision cannot move forward in compliance with the applicable zoning regulations.
6. The proposed subdivision of the existing parcel will have an adverse effect on the housing needs of the region and of the public service needs. Furthermore, the character of the subdivision is not compatible with the design of existing structures and properties in the general area.

VARIANCE:

1. Finding: There are no exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that does apply generally to other property or classes of use in the same vicinity or zone.

Reason: There are no exceptional or extraordinary circumstances pertaining to the site that warrant approval of a Variance. There are no other properties in proximity to the subject site zoned R-1, R-2, or R-3 that are less than 5,000 square feet in lot area. This development, based on lot size, would be uncharacteristic to other properties in the vicinity.

2. Finding: The Variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, but which is denied to the property in question.

Reason: The granting of the Variance would give the subject property owner a special privilege over other property owners in the area in regard to the minimum lot area requirement. Although there are a couple legal nonconforming residential properties that range in size from 6,095 to 6,773 square feet, within the proximity of the subject site, there are none that are less than 5,000 square feet in area. The vast majority of the properties do meet the minimum lot area requirement of 7,200 square feet. The proposed Lot 1 is 4,938 square feet, which would be 2,262 square feet short of the minimum requirement of 7,200 square feet. This deviation is not commonly found in R-3, or even R-2, zoned properties that are located in the vicinity of the subject property.

3. Finding: The granting of such Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Reason: Approval of the Variance request would allow a deviation from the minimum lot area requirement to permit a 4,938 square foot lot, Lot 1, which is 2,262 square feet short of the minimum requirement of 7,200 square feet. Although, the proposed deviation does not appear to be materially detrimental to the public welfare or injurious to the structure or to the future occupants of the site due to not complying with the minimum lot area requirement, it still remains well short of the minimum lot area requirement and is not in keeping with the consistency of neighboring lot sizes for this area.

4. Finding: The granting of such Variance will adversely affect the comprehensive General Plan.

Reason: Granting approval of the proposed Variance would adversely affect the General Plan of the City of Garden Grove. One of the goals of the General Plan is to encourage the development and promote the production of safe housing within the community. The proposed subdivision does not comply with the goals of the General Plan. For example, two policy goals from the City's adopted General Plan, which are as follows: assure that the type and intensity of land use shall be consistent with that of the immediate neighborhood; and new development shall be similar in scale to the adjoining residential neighborhood to preserve its character, are not reflected in the proposed tentative parcel map noting the smaller parcel is not in size or scale to surrounding properties, and the type of subdivisions is not of similar nature to surrounding subdivided parcels. Therefore, granting of the Variance would not be in keeping with the spirit and intent of the General Plan.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The Tentative Parcel Map and Variance do not possess characteristics that would justify the request in accordance with Municipal Code Section No. 9.40.130 (Tentative Parcel Map) and Section 9.32.030.6 (Variance).

ADOPTED this 7th day of July, 2011

/s/ PHAT BUI
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on July 7, 2011, by the following votes:

AYES:	COMMISSIONERS:	BRIETIGAM, CABRAL, LAZENBY, PAK, SILVA
NOES:	COMMISSIONERS:	BUI, DOVINH
ABSENT:	COMMISSIONERS:	NONE

/s/ JUDITH MOORE
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is July 28, 2011.

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

PUBLIC HEARING: TENTATIVE PARCEL MAP NO. PM-2011-000
VARIANCE NO. V-191-11
APPLICANT: YI DANG
LOCATION: NORTHEAST CORNER OF DALE STREET AND ACACIA AVENUE AT 8503 ACACIA AVENUE
DATE: JULY 7, 2011

REQUEST: Tentative Parcel Map approval to subdivide an existing approximately 13,550 square foot lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. Also, a Variance approval to deviate from the minimum lot area for the R-3 (Multiple-Family Residential) zone. The site is in the R-3 (Multiple-Family Residential) zone.

Staff report was read and recommended denial. Staff corrected an error in the staff report, page 3, paragraph 1, stating that the property development standards would not be in compliance with the proposed small lot subdivision and the rear-yard open space would not be met in the configuration shown with the two existing units. Staff also mentioned that if the Parcel Map was approved, the plan could be redesigned to comply; that in the past ten years, two variance requests were approved, however, they were more consistent with the General Plan and lots in the neighborhood, however, the proposed project was well below the minimum lot-size standard and was not in keeping with the neighborhood configuration of lots.

Commissioner Silva asked staff if a triplex could be built on the lot. Staff replied yes, provided the project would meet the code for development standards, and that a ten-foot dedication on Dale Street would still be required.

Commissioner Pak asked staff if there was parking data. Staff responded that the project meets the R-1 standards, which includes parking.

Chair Bui stated to staff that other than a block wall to be built between the two homes, and in addition to two new garages, there would little impact to the surrounding neighborhood other than the project not meeting the minimum lot size requirement, and he asked if there were other options.

Staff replied that, as is, there would not be much change except for the dedication; that City improvements would not be required at this time; that if the Parcel Map were considered for approval, conditions of approval would be added, and the Variance for the rear-yard open space on lot No. 1 would be reviewed; that this proposal would set a precedence for a smaller than typical lot size for the applicant and not anyone else; and that the City was trying to apply continuity and consistency in the area for lot sizes.

Staff also added that the Parcel Map subdivision could not be approved without the Variance, which were exceptions to the zoning code; and that five findings would have to be made by the Planning Commission to support the Variance.

Commissioner Pak asked staff if the applicant explained to staff why the subdivision was necessary, as the applicant has owned the property since September of 1998. Staff responded that the property owner wished to set aside the property for his children; that the larger parcel would be reserved for the applicant and the smaller parcel would go to one of his children.

Commissioner Pak asked for the cost amount for the application process for this project. Staff replied that the amount was \$3,130, not including the environmental fees if the project were approved.

Commissioner Lazenby asked staff that if the Variance was modified, would the project comply with City code? Staff responded that the rear-yard lot open space on the plan would have to be modified or an additional Variance would need to be filed with the required findings for approval.

Chair Bui asked that if the project was denied could a privacy wall be built between the homes? Staff replied that, with a building permit, fencing could be placed on the proposed property line as long as the fence would meet code for height and location.

Commissioner Lazenby added that to share in the ownership of the parcel, the mortgage status could be changed to joint tenancy.

Commissioner Cabral asked staff if the applicant was flexible with the proposal. Staff replied that in order to support the subdivision to be fairly equal, the lot no. 2 home would need to be demolished, or modifications would need to be made to one of the structures.

Commissioner Pak asked staff when the sidewalk improvements would occur on Dale Street as there was an unimproved sidewalk area with an ominous storm drain that could be considered a safety hazard. Staff responded that Dale Street was a secondary arterial with a right-of-way width that should be 80 feet from one property line to the other; that over time the City would acquire the right-of-way through a capital improvement program or by property owner dedication; that when the dedications were acquired a full street improvement would be scheduled; and that through the subdivision map act and property improvement, the City could ask property owners to dedicate right-of-way as necessary.

Chair Bui opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Leon Tran, the applicant's representative, and Mr. Dinh Lai Vu, the property owner, approached the Commission and distributed handouts. Mr. Vu described the project stating that the proposal was to keep the subdivision residential and to not create any environmental obstacles; that the City has future plans to improve the Dale Street sidewalk by utilizing a ten-foot dedication in addition to the previous five-foot dedication for sewer repair between Dale Street and Acacia Avenue that occurred approximately ten years ago; that there was no damage reimbursement; that 1,500 square feet in total would be dedicated; and that due to the dedication, his proposal would not be supported.

Mr. Vu also described his declining health condition and stated that he wished to bequeath the property to his children, in two parts, to avoid any future disputes.

Commissioner Dovinh asked the applicant how long he has lived in the residence and how long have the two separate units been in existence. Mr. Vu replied that he purchased the property approximately 12 years ago with two units already on it.

Vice Chair Cabral asked the applicant for his plan if the request was not approved. Mr. Vu stated that he would ask for an appeal.

Vice Chair Cabral asked the applicant if he would be willing to work with staff to modify his proposal for compliance. Mr. Vu replied that he could not afford to modify the proposal.

Chair Bui asked the applicant if the children would stay in the homes or use them as rentals? Mr. Vu replied that their intent was to return to the community and live in the homes.

Commissioner Pak asked the applicant if he had considered joint tenancy between the children. Mr. Vu replied no.

Commissioner Pak also noted that the property had two separate addresses.

Mr. Vu stated that the future 1,500 square foot cut on Dale Street would impact his proposed subdivision.

There being no further comments, the public portion of the hearing was closed.

Commissioner Brietigam stated that he appreciated the applicant's position; that the City had rules in place for the future; and there was no support for findings in order to approve the project.

Commissioner Dovinh expressed that he would support the project due to the corner lot configuration; that the dedication cuts into the applicant's ability to subdivide and he was losing property rights; that the applicant had been at the location for twelve years with no complaints with two units; that the Planning Commission needed to vote for the growing needs of a changing community and be tolerant with variances; that this was not the first variance; that the use was not unsafe; that to grow as a community, Garden Grove needs to subdivide the large lots; and that if we are conservative, we would not grow as a community.

Commissioner Brietigam partially agreed, however, he stated that with subdivisions the City would not have big lots; that with more people there would be more traffic congestion; and that the greater good needed to be addressed, and not the one.

Vice Chair Cabral also agreed in part and stated that the General Plan was in place as a vision for the City of Garden Grove; that the large size lots were an attraction to Garden Grove; that the facts show that there were two properties and two houses that could be given to the children; and that she would not support the proposal.

Commissioner Pak stated that the General Plan was to safeguard the well being of the residents of Garden Grove; that there were other small developments; that the applicant knew what he was buying at the time; and that the use should be equal to the neighbors without special privileges.

Commissioner Silva asked staff that if the applicant did not 'gift' the land, would he compensated for the acquisition of the dedication at a later date? Staff replied yes,

and improvements such as curb and gutter, new driveways, and sidewalk would be implemented; and that if a development were to occur, the City would ask the developer to dedicate and possibly be responsible for the improvements.

Commissioner Lazenby commented that there were other options for leaving the property to the children and that the applicant would be compensated for the dedication.

Chair Bui expressed his support for the applicant as the homes have existed for over ten years; that a block wall could subdivide the property; that the west side area adjacent to Dale Street was open; and that there would be little impact to the neighborhood as the lot was a corner lot.

Commissioner Silva questioned staff that if the lot were subdivided, could the lots be sold separately. Staff replied yes.

Chair Bui added that his support was based on the land area being sufficient for two homes that have not had issues.

Commissioner Brietigam moved to approve the denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, seconded by Commissioner Cabral, pursuant to the facts and reasons contained in Resolution No. 5741-11. The motion received the following vote:

AYES:	COMMISSIONERS:	BRIETIGAM, CABRAL, LAZENBY, PAK, SILVA
NOES:	COMMISSIONERS:	BUI, DOVINH
ABSENT:	COMMISSIONERS:	NONE

APPEAL

RECEIVED
CITY OF GARDEN GROVE
CITY CLERK'S OFFICE

REQUEST FOR CITY COUNCIL OR PLANNING COMMISSION PUBLIC HEARING

TO: City Clerk's Office, City of Garden Grove
11222 Acacia Parkway, Garden Grove, CA 92840
(714) 741-5040

2011 JUL 25 P 3:44

Pursuant to Section 9.32.110 of the Municipal Code, I hereby appeal the decision of the **Planning Commission / Zoning Administrator** in Case No. PM-2011-000/V-191-11 and petition the **City Council / Planning Commission** for a Public Hearing to consider **approving / denying / modifying** the subject application for the following reasons:

I feel like unfair so we like to come up to City
council.

August 23, 2011 City council meeting.

LEON D. TRAN
7332 - 20TH STREET APT E
WESTMINSTER, CA 92683

90-8200/3222

528

DATE 7/25/11

© 2006 FIRST OF BANK

PAY TO THE ORDER OF City of Garden Grove \$ 100 —
One Hundred dollars even DOLLARS

SchoolsFirst
FEDERAL CREDIT UNION
Serving School Employees in OCTEDU Since 1981
PO BOX 11547, SANTA ANA, CA 92711-1547

Tran

⑆32228 2001⑆400503426702⑈00528

Date: 7/25/11 Appeal Fee (see reverse): _____

Appellant: Dinh Lai Vu / LEON TRAN

Address: 8503 Acacia Ave

City & ZIP: Garden Grove CA Phone No.: (714) 418-6604

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION
TO DENY TENTATIVE PARCEL MAP NO. PM-2011-000 AND VARIANCE NO. V-191-11

WHEREAS, the case, initiated by Dinh Lai Vu, requesting Tentative Parcel Map approval to subdivide an existing approximately 13,550 square foot lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. Also, a Variance approval to deviate from the minimum lot area for the R-3 (Multiple-Family Residential) zone, for a property located on the northeast corner of Dale Street and Acacia Avenue, at 8503 Acacia Avenue, Parcel No. 133-473-09; and

WHEREAS, Dinh Lai Vu, the property owner, has requested the appeal of the denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11; and

WHEREAS, pursuant to Resolution No. 5741-11, the Planning Commission, at a public hearing on July 7, 2011, denied Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on September 13, 2011, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of September 13, 2011.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council denies the appeal and upholds the Planning Commission's decision to deny Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5741-11;

A copy of Planning Commission Resolution No. 5741-11 is on file in the office of the City Clerk, concurrently submitted in the agenda materials for Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, and incorporated herein by reference with the same force and effect as set forth in full.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
APPROVING THE APPEAL FOR TENTATIVE PARCEL MAP NO. PM-2011-000 AND
VARIANCE NO. V-191-11

WHEREAS, the case, initiated by Dinh Lai Vu, requesting Tentative Parcel Map approval to subdivide an existing approximately 13,550 square foot lot into two separate parcels. Lot 1 will be 4,938 square feet in area and Lot 2 will be 7,500 square feet in area. Also, a Variance approval to deviate from the minimum lot area for the R-3 (Multiple-Family Residential) zone, for a property located on the northeast corner of Dale Street and Acacia Avenue, at 8503 Acacia Avenue, Parcel No. 133-473-09; and

WHEREAS, Dinh Lai Vu, the property owner, has requested the appeal of the denial of Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11; and

WHEREAS, pursuant to Resolution No. 5741-11, the Planning Commission, at a public hearing on July 7, 2011, denied Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on September 13, 2011, and all interested persons were given an opportunity to be heard. The discussion of the item was continued to September 27, 2011; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of September 13, 2011, and continued the discussion of the item to September 27, 2011.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the City Council, as required under Municipal Code Section 9.40.060 (Tentative Maps – Findings Required) and 9.32.030 (Variances), are as follows:

FACTS:

The subject property is currently an approximate 13,550 square foot lot, located on the northeast corner of Dale Street and Acacia Avenue at 8503 Acacia Avenue. The property has a General Plan Land Use Designation of Medium Density Residential and is zoned R-3 (Multiple-Family Residential).

The site is currently improved with two detached existing residential dwelling units.

FINDINGS AND REASONS FOR TENTATIVE PARCEL MAP APPROVAL:

The proposal meets the required findings under section 9.40.060 (Tentative Maps – Findings Required).

1. The map is consistent with the City's General Plan in that the subdivision of the existing parcel into the proposed new parcels is consistent with the State Subdivision Map Act. The project is consistent with the existing General Plan designation of Medium Density Residential.
2. The design of the proposed two-lot subdivision is consistent with the R-3 (Multiple-Family Residential) zone, Title 9 of the Garden Grove Municipal Code, and the General Plan.
3. The site is physically suitable for the existing development and complies with the spirit and intent of the R-3 (Multiple-Family Residential) zone and Title 9 of the City's Municipal Code.
4. The project is categorically exempt pursuant to the California Environmental Quality Act (CEQA), Section 15315, Minor Land Divisions.
5. The design of the subdivision is not likely to cause problems to the public health, safety, and welfare, and the two (2) new parcels.
6. The design of the subdivision will not conflict with the easements of record or easements established by court judgment acquired by the public-at-large for access through or use of property within the subdivision; if such easements exist, then alternate easements for access or for use will be provided and these will be substantially equivalent to the ones previously acquired by the public.
7. The design and improvements of the subdivision are suitable for the existing site improvements and the subdivision can move forward in compliance with the applicable zoning regulations.
8. The design and improvement of the proposed subdivision are suitable for the proposed project and the subdivision will be in compliance with the applicable zoning regulations.
9. The design of the subdivision, to the extent feasible, does have allowance for future passive or natural heating and cooling opportunities.
10. The proposed subdivision of the existing parcel will have no effect on the housing needs of the region and of the public service needs. Furthermore, the character of the subdivision is compatible with the design of existing structures in the general area. The proposed subdivision will not cause a

need for additional housing in the area. The existing buildings and businesses will continue to operate as an integrated development.

FINDINGS AND REASONS FOR VARIANCE APPROVAL:

Variance Findings

1. That there are exceptional circumstances, or conditions applicable to the property involved, or to the intended use or development of the property that do not apply generally to other properties in the same zone or neighborhood.

Response: There are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other properties in the same zone or neighborhood. Although the current lot size is approximately 13,550 square feet, for property development considerations, the property is subject to a 10'-0" right-of-way dedication along the westerly property, as well as a corner cut-off dedication. This exceptional circumstance reduces the lot size to a net developable area of 12,438 square feet. Corner properties in the R-3 zone are not typically subject by such conditions in regard to the required right-of-way dedication and the corner cut-off dedication.

2. That such a Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, but which is denied to the subject property.

Response: There are R-3 zoned properties that are corner lots and/or lots adjacent to corner lots that maintain lot areas that are consistent with the proposed 4,938 square foot lot. Therefore, the subject Variance request will not create a lot that is out of character with the development patterns in the R-3 zone. There are other existing properties located in the R-3 zone with lot sizes that are approximately 5,000 square feet. There are also properties that are part of small-lot subdivisions, which have lot sizes close to 5,000 square feet. Furthermore, the City has approved variances in the past for lot size deviations that are similar to the subject project in terms of lot size. Therefore, the subject Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, but which is denied to the subject property. Besides the variance to the minimum lot size, the proposed subdivision, which includes the two (2) existing homes, meet the development standards for a single-family home in the R-3 zone as they pertain to setbacks, lot coverage, access, parking, open space requirements, and minimum unit size.

3. That the granting of a Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or neighborhood in which the property is located.

Response: Since the proposed subdivision will not be out of character with other lots in the same zone, the proposed subdivision will not be detrimental to the public welfare or injurious to the property or improvements within the R-3 zone.

4. That the granting of such Variance will not adversely affect the City's General Plan.

Response: While the applicant is requesting a Variance to deviate from the Code's prescribed minimum lot size of 7,200 square feet, the proposed subdivision and Variance request will correspond with some of the lots already established within the R-3 zone. Approval of the subject Variance will create a lot that will be within the allowable densities for the zone and approval of the subdivision will be compatible with the established pattern and character of similar properties with the R-3 zone. Therefore, the approval of the subject Variance will not create an adverse effect on the City's General Plan.

5. That the approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

Response: Granting of the subject Variance request will not create a lot that is out of character with the development patterns in the R-3 zone nor will it grant special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated. There are other existing properties located in the R-3 zone with lot sizes that are approximately 5,000 square feet. Conditions of approval will ensure that the proposed subdivision will not be detrimental to the public welfare or injurious to the property or improvements within the R-3 zone.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council approves the appeal for Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, based upon the facts, findings and reasons set forth in the Resolution for approval of the appeal;
2. In order to fulfill the purpose and intent of the Municipal Code, and thereby promote the health, safety, and general welfare, the attached Conditions of Approval (Exhibit "A") shall apply to Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11.

EXHIBIT "A"

Parcel Map No. PM-2011-000 & Variance No. V-191-11

8503 Acacia Avenue

CONDITIONS OF APPROVAL

GENERAL CONDITIONS

1. The applicant shall record a "Notice Of Agreement With Conditions of Approval and Discretionary Permit," as prepared by the City Attorney's Office, on the property. Proof of such recordation is required prior to the recordation of the Final Parcel Map. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval of the Planning Commission.
2. Approval of this Tentative Parcel Map and Variance request shall not be construed to mean any waiver of: Applicable and appropriate zoning regulations, or any Federal, State, County, and City laws and regulations. Unless otherwise expressly specified, all other requirements of the Garden Grove Municipal Code shall apply. The applicant shall obtain, and abide by, any necessary permits or licenses required to prepare, process and receive Final Parcel Map approval including recordation of this map, in compliance with all applicable laws.
3. All conditions contained herein shall apply to Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes to the conditions of approval require approval by the Zoning Administrator.
4. The applicant/property owner shall submit signed letters acknowledging receipt of the decision approving Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11, and his/her agreement with all conditions of approval.

Engineering Services Division Conditions

5. Before the issuance of a building permit, the applicant shall dedicate ten (10) feet of road right-of-way on Dale Street along the property frontage for an ultimate half-road right-of-way width of 40 feet, to provide for future street improvements. This will bring this segment of Dale Street into compliance with its Master Planned Designation as a Secondary Arterial Highway. The

Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11
Conditions of Approval

applicant shall also dedicate a corner cut-off in accordance with City Standard Plan B-107.

6. A separate street permit is required for work performed within the public right-of-way.
7. Prior to recordation of the final parcel map, the applicant shall prepare street improvement plans and widen Dale Street by constructing the ultimate roadway improvements along the property frontage in a manner meeting the approval of the City Engineer. Said improvements shall include curb and gutter 32 feet from the centerline, a new curb return, and an 8-foot sidewalk.
8. TIES TO HORIZONTAL CONTROL: Prior to recordation of the final parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The surveyor/engineer shall submit record information to the City on Auto Cad DWG format.
9. DIGITAL MAP SUBMISSION: Prior to recordation of the Final Parcel Map, the surveyor/engineer preparing the map shall submit to the County Surveyor a digital graphics file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The surveyor/engineer shall submit record information to the City in Auto Cad DWG format.

Community Development Department Conditions

10. Any building improvements shall comply with the current California Building Code.
11. The applicant shall build the new two-car garage, on Lot 1, with a minimum inside dimension of 20'-0" x 20'-0". The new two-car garage shall comply with all applicable development standards in Title 9 of the Municipal Code, including, but not limited to rear and side setbacks and minimum rear yard open space.
12. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Zoning Administrator, or other City decision-making body, or City staff action concerning Tentative Parcel Map No. PM-2011-000 and Variance No. V-191-11. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse

the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City, including but not limited to, any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.