

**PLANNING COMMISSION REPORT
REGULAR AGENDA -- PUBLIC HEARING ON VARIANCE REQUESTS ONLY**

PC Staff Report
07/22/2009

**ITEM NO. 7: PRELIMINARY PLAT FOR FIFTH STREET BLUFF SUBDIVISION
(MKM)**

PP-04-01-08: Consider the Preliminary Plat and variances related to dedication of rights-of-way and frontage for Fifth Street Bluff Subdivision, 0.29-acre subdivision consisting of one lot, located at 427 Country Club Court (W. 5th St east of Iowa St.). Submitted by JMC Construction, Inc., property owner of record. *City Commission referred back to the Planning Commission on 6/23/09 for consideration of variances to dedication and frontage requirements.*

STAFF RECOMMENDATION: Staff recommends approval of the following variances:

- 1) From Section 20-810(d)(4)(i) which requires 60 ft of right-of-way for local streets to permit the right-of-way to remain at 50 ft in this location.***
- 2) From Section 20-810(a)(2)(i) which requires that lots be designed to comply with all applicable zoning district regulations to permit the creation of a lot with 37.35 ft of frontage in the RS10 Zoning District.***

STAFF RECOMMENDATION: Staff recommends approval of the Preliminary Plat of the Fifth Street Bluff Subdivision and returning it to the City Commission for consideration of dedication of easements and ~~right-of-way~~ subject to the following conditions of approval:

- 1) The preliminary plat shall be revised with the following changes:
 - a. The following note shall be added to the preliminary plat and included on the final plat: "The driveway shall be located as far to the northeast as possible and the property owner shall remove all obstructions within the sight triangle of the driveway."
 - b. The plat shall be revised to show the sight distance triangle for the driveway.

Applicant's Reason for Request: Subdivision requirement prior to development of property. ***Variances necessary as a result of the City Commission's decision to not accept the dedication of right-of-way.***

This staff report has been revised from the report presented to the Planning Commission at their May 18, 2009 meeting to include information on the City Commission's action on the appeal and dedication of right-of-way and easements. All new language will be in ***bold italic print***, and all deleted language will be shown as ~~struckthrough~~.

KEY POINTS

- The property was part of a larger parcel addressed as 427 Country Club Court. The northern portion of the parcel was platted in 1952 as Lot 23, Block 29 of Countryside Subdivision. The subject property is not a platted lot.
- ***The Planning Commission approved the preliminary plat at their May 18, 2009 meeting and forwarded it to the City Commission for acceptance of dedication of easements and rights-of-way. That plat included the proposed dedication of additional right-of-way for Fifth Street and resulted in a lot which provided 47.13 ft of frontage along the new right-of-way line.***
- ***The City Commission considered the plat and an appeal from the Planning Commission's decision at their June 23, 2009 meeting and voted to not accept the dedication of right-of-way and returned the plat to the Planning Commission. The City Commission suggested that the applicant seek the variances which would be necessary to complete the plat without the dedication of the additional right-of-way.***
- ***The plat is not compliant with Sections 20-810(d)(4)(i) & (20-810(a)(2)(i) of the Subdivision Regulations. The right-of-way for W 5th Street in this area is 50 ft rather than the 60 ft required by Code. Without the dedication of additional right-of-way, the lot frontage is 37.35 ft rather than the 40 ft required in the RS10 Zoning District. Variances are being requested from these standards with this plat.***

SUBDIVISION CITATIONS TO CONSIDER

- This application is being reviewed under the Subdivision Regulations for Lawrence and Unincorporated Douglas County, effective Jan 1, 2007.
- Section 20-813 states that building permits will not be issued for unplatted property.
- Section 20-810(d)(4)(i) contains the right-of-way requirements for City streets. Inadequate right-of-way is currently provided for W 5th Street adjacent to the subject property. ***A variance is being requested from this standard.***
- ***Section 20-810(a)(2)(i) requires that lots be designed to comply with all applicable zoning district regulations. A variance is being requested from this standard.***
- ***Section 20-809(i) states that if the governing body rejects part or all of a proposed dedication, the subdivider may amend the preliminary plat and resubmit it for consideration by the Planning Commission without the rejected dedication.***

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Submittal of the preliminary plat to the City Commission for acceptance of dedication of rights-of-way and easements.
- Submittal, administrative approval, and recordation of the final plat.

PLANS AND STUDIES REQUIRED

- *Traffic Study* – Not required for project.
- *Downstream Sanitary Sewer Analysis* – The City Utility Engineer indicated that a DSSA is not required.
- *Drainage Study* – Per the City Stormwater Ordinance, drainage studies are not required for sites of less than .5 acre.
- *Retail Market Study* – Not applicable to project.

- *Sight Distance Study* – The City Engineer required a sight distance study to determine if a driveway could be safely located on this property. The City Engineer reviewed the study and determined that a driveway could be safely located on the proposed lot with the following conditions:
 - (1) Move the driveway to the northeast as much as possible; this will bring the available sight distance to the left and right a little closer.
 - (2) Remove all obstructions within the sight triangle.

ATTACHMENTS

- (1) Letter from owners of property within Grandview Heights Addition.
- (2) Grandview Heights Final Plat
- (3) Sight Distance Study
- (4) ***Slope Comparison Graphic*** (*This was an attachment with the original staff report but was not listed.*)
- (5) ***Appeal Letter***
- (6) ***Appeal Letter addendum***
- (7) ***Memo from neighbor regarding the appeal***
- (8) ***Waiver request submitted with original application***
- (9) ***Variance requests submitted after City Commission action***

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- Received phone call and e-mail from Jackie Schafer, owner of the adjacent property to the east. She expressed concern about the addition of another driveway on the street, given the topography and design of the street. I provided her with the City Engineer’s determination on the sight distance study. She also emailed with questions on any waivers or variances which were being requested with this plat. I informed her that with the dedication of additional right-of-way for 5th Street, no waivers or variances were necessary.
- Received a letter of opposition signed by property owners of property within the Grandview Heights Subdivision. The letter expressed concern with the impact of an additional driveway on the safety of the street and included plans which they indicated showed that access was not intended for this parcel. These plans show that 5th Street had originally been intended as a straight street and the Chaney parcel was not adjacent to 5th Street at that time. The Grandview Heights final plat did not address access to the subject property as it is not included in the plat. (The letter and a copy of the Grandview Heights plat is attached)

Site Summary

Gross Area:	12,702 sq. ft. (.291 acres)
Rights-of-Way:	213.5 sq-ft
Net Area:	12,488.5 sq. ft. (.286 acres) 12,702 sq ft (.291 acres)
Number of Lots:	1

GENERAL INFORMATION

Current Zoning and Land Use: RS10 (Single-Dwelling Residential) District; undeveloped.

Surrounding Zoning and Land Use: RS10 (Single-Dwelling Residential) District; with the exception of the lot to the west, which is undeveloped, the surrounding properties are developed with Single-Dwelling Residences.

STAFF REVIEW

The applicant purchased the subject property and submitted the application for a preliminary plat in April of 2008. At that time, the subject property was part of a larger parcel which is addressed as 427 Country Club Court. The northern portion of the parcel was platted in 1952 as Lot 23 Block 29 of Country Club Addition; however, the subject property is not a platted lot. The applicant plans to build a single-dwelling residence and platting is required prior to the issuance of a building permit per Section 20-813(e) of the Subdivision Regulations.

Zoning and Land Use

The subject property is zoned RS10 (Single-Dwelling Residential) District which permits lots with a minimum area of 10,000 sq. ft. The property is located within an established neighborhood, also zoned RS10 which has been developed with single-dwelling residences, with the exception of one unplatted parcel west of the subject property which is also undeveloped.

Streets and Access

The property is adjacent to, and will take access from W 5th Street. W 5th Street is classified as a 'local street'. Per Section 20-810(4)(i), local streets require 60 ft of right-of-way. The City Engineer indicated that 5 ft of right-of-way should be dedicated with this plat. ***The City Commission did not accept the dedication of additional right-of-way and returned the plat to the Planning Commission to reconsider without the dedication. The applicant is therefore requesting a variance from the right-of-way requirement in Section 20-810(d)(4)(i). The variance is discussed in a later section of this staff report.***

The City Engineer required a sight distance study to determine if a driveway could be safely located on W 5th Street in this location. The City Engineer determined that a driveway could be safely located on the subject property provided the driveway was located to the northeast as much as possible and all obstructions within the sight triangle are removed. The City Horticulture Manager had no concerns with the removal of the vegetation within the sight triangle.

The public comment received related primarily to safety concerns related to the steepness of the road in this area. Percent slope is calculated with the following ratio: % Slope = (Change in elevation [rise] / Change in distance [run]) x 100. The sight distance study included the elevation of the road for 160 ft to the west of the centerline of the driveway and 225 ft to the east for a total distance of 385 ft. The study indicates that the elevation of the road varies from 961 ft on the east to 932 ft on the west for a change in elevation of 29 ft. The slope of the road in this area is approximately 7.5%. [% slope = rise/run x 100; 29/385 x 100 = 7.5%] Other streets within the City of Lawrence with similar or steeper grades include Morning Dove Circle located south of Stonegate Park near I-70 with a grade of 9.05%; W 12th Street west of Indiana Street with a grade of 14%; and W Hills Parkway with a grade of 8.2%. The general layout of the proposed lot and W 5th Street is shown in Figure 1. Attachment A contains a comparison of Morning Dove Circle and W 5th Street.

Utilities and Infrastructure

Water and sanitary sewer lines are available to serve this development and are located within the right-of-way of W 5th Street. The City Utility Engineer indicated that if any grade changes

are made with this development that affect the sewer manholes, the sewer manholes must be adjusted to final grade. Aquila has a 2" high pressure steel gas main on the north side of W. 5th St. at this subdivision which must be shown on the plat.

Easements and Rights-of-way

Utility easements are located on the side lot lines of the adjacent lots and a 7.5 ft utility easement on the side lot lines of the proposed lot is being dedicated with this plat. As sanitary sewer is located in the right-of-way of W 5th St., a utility easement along the rear property line is not needed.

W 5th Street, a local street, contains 50 ft of right-of-way. Per Section 20-810(d)(4)(i) of the Subdivision Regulations, 60 ft of right-of-way is required for local streets. The City Engineer indicated that an additional 5' of right-of-way would be required with this plat. ~~The plat shows the 5 ft of right-of-way being dedicated for W 5th St.~~ ***The City Commission did not accept the dedication of additional right-of-way and returned the plat to the Planning Commission to reconsider without the dedication. The applicant is therefore requesting a variance from the right-of-way requirement in Section 20-810(d)(4)(i). The variance is discussed in a later section of this staff report.***

Conformance

Horizon 2020 recommends that the character and appearance of existing low-density residential neighborhoods should be protected through compatible infill development. This plat creates a 12,702 sq. ft. lot. Nearby lots are within the 10,700 sq. ft. to 17,194 sq. ft. range. (See Figure 2) The lot being created with this plat is compatible with the existing lots.

The property is zoned RS10 which permits lots with a minimum lot area of 10,000 sq. ft. Other requirements for lots within the RS10 District are listed in Section 20-601 of the Development Code are as follows: Minimum Lot Width – 70'; Minimum Lot Frontage – 40 ft; Minimum Setbacks – 25 ft. front, 10 ft side and 25 ft rear; Maximum Building Cover – 40% of site; and Maximum Impervious cover --- 70% of site. The setbacks, building cover and impervious cover will apply to this property as it was platted after the effective date of the Subdivision Regulations and will be addressed at the building permit stage. The minimum lot width and frontage are dimensions that are established with the plat. Lot Width is defined in Section 20-1701 of the Development Code as 'the distance between side lot lines measured at the point of the required front setback or chord thereof'. The lot width of the proposed lot is approximately 80' measured at the front setback line if an additional 5' of right-of-way is dedicated. ***Without the additional right-of-way, as shown on the June 27 revised plat, the lot width is approximately 78 ft..*** The lot frontage is approximately 45' when the additional 5' of right-of-way is considered. ***Without the additional right-of-way, the lot frontage is 37.35 ft. As the City Commission did not accept the dedication of the additional right-of-way, the lot frontage provided is less than the 40 ft minimum required in the RS10 Zoning District. The applicant is therefore requesting a variance from the requirement in Section 20-810(a)(2)(i) to permit a lot to be designed with less than the minimum required frontage. The variance is discussed in a later section of this staff report.***

VARIANCES

The property owner is requesting variances from Section 20-810(d)(4)(i) which requires 60 ft of right-of-way for local streets and from Section 20-810(a)(2)(i)

which requires that lots be designed to comply with all applicable zoning district regulations.

Section 20-813(g) states that the Planning Commission may grant a variance from the design standards of these regulations with the exception of the standards of the wastewater disposal system standards only if the following three criteria are met: that the strict application of these regulations will create an unnecessary hardship upon the Subdivider, that the proposed variance is in harmony with the intended purpose of these regulations and that the public health, safety and welfare will be protected. Below is a review of the variance request in relation to these criteria.

Criteria 1: Strict application of these regulations will create an unnecessary hardship upon the Subdivider.

Applicant's Response: "Strict application of these regulations will create an undue hardship on my client since he will not be allowed to build a house on a lot which could conform to the regulations. As you are aware my client was pleased to dedicate the right-of-way as required by the subdivision regulation - - this dedication in turn would have provided a lot with the required frontage of 40'. IF the city feels it is a better process to grant two variances in order to allow this property to re-plat* my client will accept this decision, as long as the variances are in fact granted."

RIGHT-OF-WAY: Strict application of these regulations would require the dedication of additional right-of-way for W 5th Street in this area. The area contains established single dwelling residences and the street right-of-way of 50 ft was established with the platting of the surrounding properties in the 1950s. As it is unlikely that all of the platted properties would replat, it is unlikely that the width of the street would be increased throughout the length of the block. It would be possible to dedicate the additional right-of-way; however, the City Commission indicated they did not wish to accept the dedication of right-of-way for which there were no plans to utilize. As the City Commission will not accept the dedication of the additional right-of-way, the strict application of these regulations would prevent the property owner from platting the property and would result in an unbuildable lot.

MINIMUM LOT FRONTAGE: The lot, as configured without the additional right-of-way, contains inadequate lot frontage. The Grandview Heights Subdivision platted the properties along W 5th Street; however, the subject property was not included in the plat. As a result, the amount of lot frontage available is restricted by the previous plat. As this is an 'infill' development, the applicant has no other avenue through which to obtain additional frontage for this property. Strict application of these regulations would prevent the property owner from platting the property and would result in an unbuildable lot.

Criteria 2: The proposed variance is in harmony with the intended purpose of these regulations.

Per Section 20-801(a) of the Subdivision Regulations, these regulations are intended to ensure that the division of land will serve the public interest and general welfare as well as to provide for the conservation of existing neighborhoods.

Applicant's response: "The proposed variances can be supported due to the existing conditions in this area in regards to the right-of-way. While we would not have chosen to seek these variances, with the comments and requests of the city commission to proceed in this manner, we can certainly support their reasoning. The width of 40' is actually somewhat arbitrary as to an actual required width of a lot in order to provide access. Obviously a lot does not need 40' to provide access...so granting of a variance in this case of 2.5' from the required 40' seems to be in harmony with the required development code. The fact that IF the city actually accepted the required right-of-way dedication that the lot would be wider than 40' shows that this variance actually has no impact on the allowed improvements and therefore should be granted."

RIGHT-OF-WAY: The City Engineer stated that he has no concern with the additional right-of-way not being provided with this plat. The majority of the surrounding area is developed and it is unlikely that the additional right-of-way along W 5th Street would be dedicated to the City. The street would continue to function in the same manner without the dedication of the additional right-of-way. The variance is in harmony with the intended purpose of the Subdivision Regulations.

MINIMUM LOT FRONTAGE: The proposed lot frontage, 37.35 ft, is 2.65 ft less than the minimum 40 ft of frontage which is required for the RS10 Zoning District. (Figure 3) The variance will allow for infill development which is compatible with the existing neighborhood. The variance is in harmony with the intended purpose of the Subdivision Regulations.

Criteria 3: The public health, safety and welfare will be protected.

Applicant's response: "The granting of the variances does not change the physical improvements to the lot, therefore the health safety and welfare of the public is protected. The variances do not create a situation in which a re-platted* lot is being created which is different than what it would be IF the city did in fact accept the right-of-way dedication."

Right-of-Way: The variance would allow the street right-of-way to remain 50 ft throughout the length of the block, which would have no negative impact on the public health, safety and welfare.

Minimum Lot Frontage: The variance would allow the creation of one lot on an established block with a lot frontage that is 2.65 ft less than permitted by Code. This amount of variation would have no negative impact on the public health, safety and welfare.

CONFORMANCE

With the approved variances and recommended conditions, the preliminary plat is in conformance with the standards and requirements of the Subdivision Regulations and the Development Code.

**** The applicant refers to 're-platting' the lot in the response to the variance criteria. The property, along with the remainder of the block, was platted as Block 29 of the West Lawrence Addition in 1869. The subject property and two adjoining properties to the west were not included when the surrounding properties in Block 29 were platted into lots with the Countryside and the Grandview Heights Subdivisions. Therefore the subject property is part of a platted block but is not a 'platted lot'.***

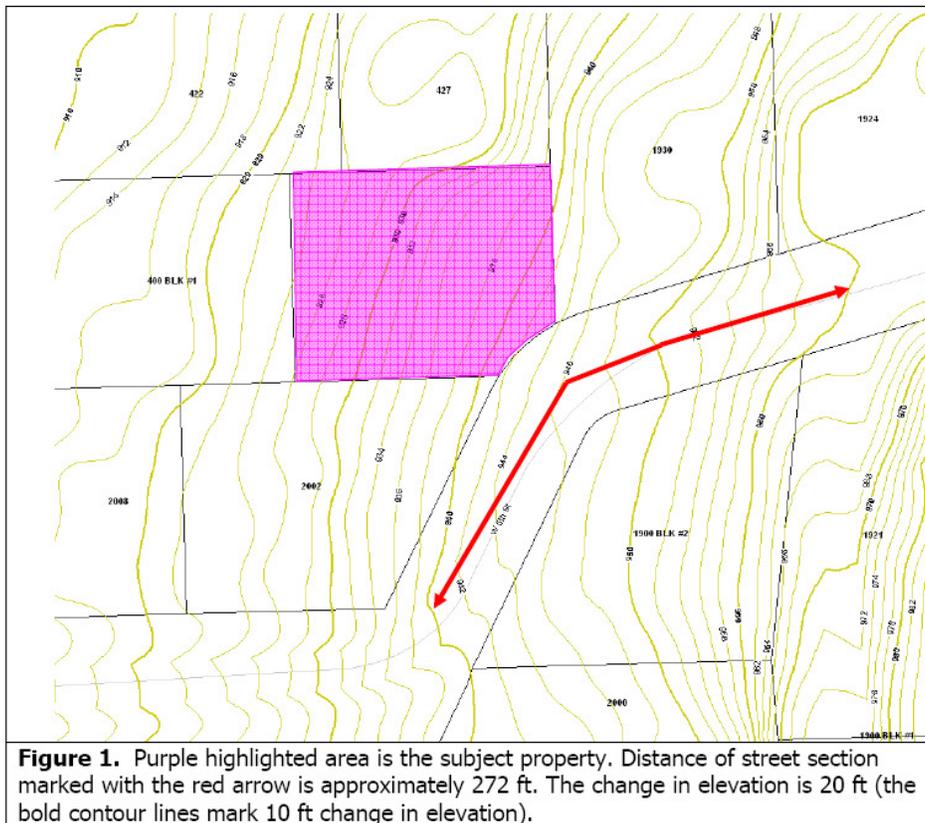




Figure 2. The proposed lot, outlined in red, is compatible with the size and shape of existing lots in the area.

New Graphic

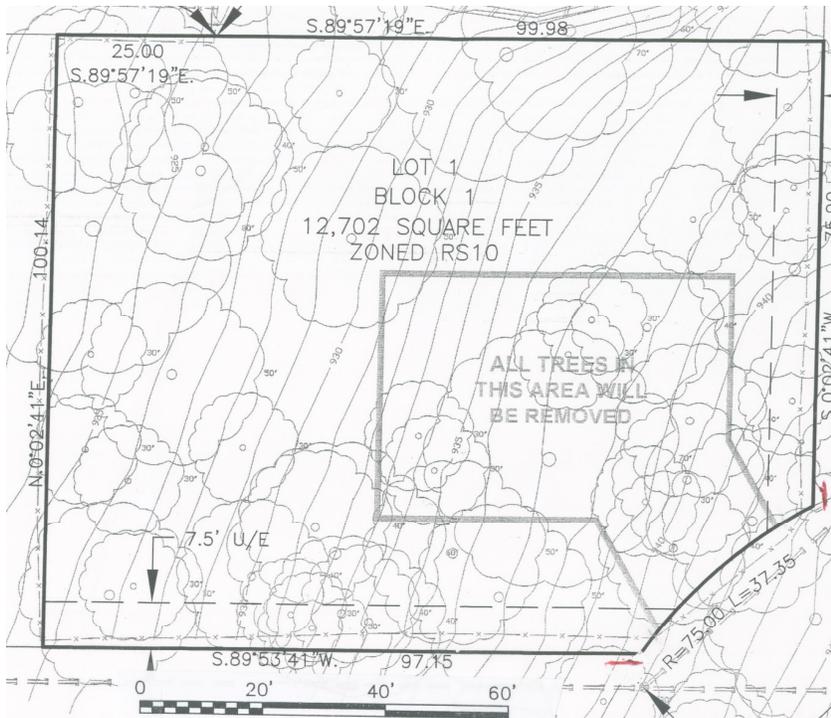


Figure 3. The red hatchmarks along the street frontage indicate the amount of street frontage that is required in the RS10 District. The variance is being requested to permit the frontage to vary below the minimum as shown on the plat.

