

City of Lawrence
Planning Commission minutes
July 22, 2009

MEMBERS PRESENT: Carter, Dominguez, Finkeldei, Harris, Hird, Moore, Singleton

MEMBERS ABSENT: Blaser, Chaney, Rasmussen, Student Commissioner Shelton

STAFF PRESENT: McCullough, Stogsdill, J. Miller, M. Miller, Uddin, Ewert

PC Minutes 7/22/09 **DRAFT**

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 PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Harris inquired about the compatibility of the neighborhood. She asked about one of the neighbors saying the house would have to be built closer to the road due to the configuration of the lot.

Ms. Miller said the applicant could probably speak more about that. She said it could be built farther back on the lot but then more trees would have to be removed. She stated the lot has the setback requirement.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said the property owner has the right to build a house on the property. He stated the owner is more than willing to give the 5' R-O-W. He said a one lot plat is usually off the radar and does not typically stir concerns but he would like to solve any concerns the neighbors have. He stated the only reason for the variances is because the City Commission requested that path for this property. He said they were willing to meet with neighbors about drainage concerns. He stated the house has not been designed yet. He said the lot fits in with the neighborhood. He asked for support on both variances.

Commissioner Carter asked if the applicant plans to reside at the house.

Mr. Werner said no, the applicant is the home builder, the house is being built for someone else.

PUBLIC HEARING ON VARIANCE

Mr. Jerry Wells, attorney representing a number of home owners/property owners adjacent to the property. He felt this was not good planning with this piece of property and that access could have easily been from Country Club Court. He stated the proposed driveway puts the neighbors in some danger. He said there is a history of accidents in the area and history of the road being difficult during icy conditions. He stated that the waiver must meet the criteria that it will create an unnecessary hardship. He felt the hardship was self inflicted and that it was more of an issue of money for the developer. He said the developer offered to sell the property to the adjoining property owners. He said he has heard nothing about the safety concerns expressed by neighbors.

Commissioner Hird asked for an example of a hardship.

Mr. Wells said an example of a hardship would be if a family could not move into a house because it could not comply and the family would be out of a place to live. He felt that if it is about money or lost profits then it is not a hardship.

Commissioner Hird asked if Mr. Wells was saying that it should be owner occupied.

Mr. Wells replied, no.

Commissioner Hird said he could not think of an example where it did not come down to money and that he was struggling with the concept.

Mr. Wells said he was struggling with it too but he did not write the regulations and that it is a difficult concept.

Commissioner Finkeldei asked if the two safety concerns that Mr. Wells had were steepness and icy conditions and if he had looked at the site study.

Mr. Wells said he does not feel any of the safety concerns were met. He said he did not look at the details of the site study but that accidents happen on the street frequently.

Mr. Tom Boxberger, 2002 W 5th, said the applicant stated they were willing to work with the neighbors but he has never been contacted about the development of the property. He expressed concerns about trees being removed and stated the applicant has clearcut many trees. He said that in order to get the site distance necessary the plan is to remove an enormous amount of trees on his property.

Commissioner Finkeldei asked if trees were being removed from his property or from the R-O-W adjacent to the property.

Mr. Boxberger said the R-O-W in front of his property.

Commissioner Finkeldei inquired about the safety of the street, regardless if the house is built.

Mr. Boxberger said there is already a 10 mile speed limit but nobody abides by it.

Commissioner Carter asked Mr. Boxberger if he attempted to contact the applicant.

Mr. Boxberger replied no, not me personally but neighbors have attempted to contact Mr. Chaney.

Mr. Chris Caldwell, said the street is dangerous. He stated that he repeatedly attempted to speak with Mr. Chaney last year about purchasing the property and he never returned the calls. He said it is a dangerous street, especially during icy conditions. He did not agree with the applicants hardship and said the applicant did not answer the criteria requirements for a variance. He said that infill development suggests something is missing and nothing is missing from the neighborhood. He stated the trees protect Mr. Boxberger house. He stated 'where the frontage does not fit the platting must quit.'

Ms. Jackie Schaefer, 1930 W 5th Street, said the site distance study that was conducted had a recommendation of placing the driveway as close to her lot as possible. Anybody backing out of either driveway would not be able to see a car coming. She felt the solution was to enforce the Subdivision Regulations and deny the variance. She felt the criteria for granting the variance have not been met and that denying the variance is the only legal action. She stated city staff is responsible for creating this situation by asking the developer to ask for a variance. She suggested the city buy the lot and make it an unbuildable lot, comparable to West Hills Parkway.

Commissioner Finkeldei inquired about a possible shared driveway.

Ms. Schaefer said she did not want to share a driveway and that it would create safety issues.

Mr. Lance Antle, 1908 W 5th Street, inquired how 40' road frontage was figured.

Mr. Scott McCullough said the former Development Code stated 35' road frontage requirement. The road frontage has to do with the development pattern in Lawrence and how cul-de-sac access is derived and what is reasonable for a lot to have on a curve on a cul-de-sac. The community has settled on 40' as being a reasonable amount of frontage to provide access to the road and variances are considered for different aspects of unique properties.

Mr. Antle asked if there is an error rate.

Mr. McCullough said a site study was required of the site distance to know that there will be an acceptable measure of safety. There is some objectivity to it where you look at existing development pattern.

Commissioner Moore said he lives on a cul-de-sac on a 40' lot and his thought process was that you get 20' of driveway and 20' of green space.

Mr. Shoeb Uddin said if it is less than 40' then how much less is too less. Would another variance be supported if it is 5' off. He stated it is a hypothetical case because 2 1/2' short is not the only thing taken into consideration. The overall scenario is taken into consideration such as site distance, proximity to the next driveway, the safety record of the road, slope of road, type of surface. There are numerous other factors that come into play. It is difficult to compare those two different cases because each comes with their unique characteristics and circumstances.

Mr. Antle asked if 18' would be allowed.

Mr. McCullough said that no other scenario has been analyzed than what is in front of us. 40' is what is required.

APPLICANT CLOSING COMMENTS

Mr. Werner said the 40' used to be measured at the building line but this lot is unique and the width at the building line is much greater than required, whereas on some cul-de-sacs builders were going too narrow and their solution was to push the house way back. He said that scenario is not here which is an important factor. The big underlying theme is that the Subdivision Regulations can be met. The question is if someone dedicates the R-O-W as required by the Subdivision Regulations would they have the frontage and our answer is yes. He said he could not go to the Board of Zoning Appeals and say that they do not want to put in curbs or gutters in. He said that is a question about money, but that he did get a variance for a church in North Lawrence for no curb and gutters. It was in the floodplain and rarely used and all the curb and guttering did was concentrate the water. That was about a better plan, not money. He said it is one house going on the street but that maybe it needs a curb or gutter to stop a car from going into the ditch. He said he talked to the mayor who recommended the neighbors go before the Traffic Safety Commission to discuss their concerns. This house is not going to make the safety worse on the street. He suggested the option of a hammerhead driveway so that cars could pull out forward instead of backing out. He did not call the neighbors but did contact their attorney. He said the house has not been designed yet so he did not want to put the cart in front of the horse. He did not see the concept of coming off of Country Club Court as an answer and that it would add more pavement and remove more trees.

Commissioner Hird inquired about the dedicated R-O-W. He asked if the Development Code requires 60', the neighbors all have 50', and the applicant agreed to do 50' which now requires a variance.

Mr. Werner said that was correct.

Commissioner Carter asked Mr. Werner to discuss drainage concerns.

Mr. Werner said the applicant has not gotten far enough along in the process to look at drainage yet but they are willing to do what they can.

Commissioner Hird asked if the City Commission required the R-O-W dedication be 50' instead of 60'.

Mr. McCullough said the Subdivision Regulations required an additional 5' of R-O-W for this plat, 60' total, there is 50' there now so that is 10' additional feet that is typically split on each side, that gave 5' additional feet that is basically an exaction of when a plat comes in that is required by the Code to be dedicated. The original plat showed 5' dedicated to the City. The City Commission has to accept the dedication. When Planning Commission approved the Preliminary Plat in May, at that time staff's position was that the plat fully complied with the Code. After public comment and consideration, the City Commission made a motion not to accept the dedication of 5'. That left the applicant with the option to request a variance because the City Commission did not accept the 5'. The consequences of not dedicating 5' means that the frontage remains at it's current 37.35' which is under 3' of variance of the 40'. It is staffs position that the original proposal after dedication of 5' that the 40' frontage was met. The consequence of meeting the Code with dedicating the 5' placed the lot in a situation where the other Code requirement of 40' frontage was met so there was no need for a variance. When the governing body did not accept the additional 5' it placed the property in a predicament where the 40' road frontage cannot be met.

Commissioner Carter inquired about the tress and asked if at least 75% of the tress on the lot would be saved.

Mr. Werner said that was correct.

COMMISSION DISCUSSION

Commissioner Harris asked if the public would have the opportunity to have input during the development stage.

Mr. McCullough said there would not be a site plan, only a building permit. That is not to say that staff does not get involved with issues during construction. He gave the example of a rezoning on Illinois Street where there was testimony regarding building issues. Staff met onsite with both parties and mitigated and discussed some issues.

Commissioner Carter inquired about the impact of one additional driveway.

Mr. Uddin said that when an additional driveway is added an additional conflict point is added. Conflict points always have the potential for accidents. He stated the site distance study that was submitted appears based on the posted speed limit has adequate safety.

Commissioner Carter asked if a hammerhead driveway would help.

Mr. Uddin replied, yes. He said City Commission directed staff to look at the safety and potential safety measures for the overall neighborhood. He said he initiated getting it on the Traffic Safety Commission agenda.

Commissioner Finkeldei asked if the Traffic Safety Commission looks at the steepness and condition of the road.

Mr. Uddin said those are collected in the data collection stage and presented in a staff report to the Traffic Safety Commission, but in a general manner it does not come into play.

Commissioner Finkeldei said his parents live in Arkansas on a steep road and they have grooves in the pavement. He asked if Lawrence ever did the same thing.

Mr. Uddin said not that he was aware of. He said there are no records of any reported accidents in the past 5 years on that road.

Commissioner Carter said that the project has brought to light the safety concerns of the neighbors and hoped they could be addressed by the Traffic Safety Commission.

Commissioner Dominguez said he understood the neighbors concerns but that he did not see how one driveway would make such a big difference in safety. He said he would vote in favor of the variances. He felt that all the issues have been looked at that the neighbors just do not want another house on the street. He said it is the property owners right to build a house.

Commissioner Carter said he would also vote in favor of the variance. Said the neighbors testimony regarding safety concerns on the street will bring to light issues that need to be looked at. He stated the developer sounds willing to put in a hammerhead driveway and the City Engineer is looking into the safety issues due to the neighbors input. He stated Planning Commission relies on the City Engineer survey and he says the drainage is fine. As bad as the drainage is there it could potentially improve the drainage. The owner ought to be able to put a single family home on the lot.

Commissioner Harris said she would also vote in favor. She suggested making a change to the condition about the driveway and say something like 'the driveway shall allow for headfirst egress and/or be located as far to the northeast.'

Commissioner Finkeldei asked if the hammerhead driveway could be moved slightly away from Ms. Schaefer's driveway.

Mr. Uddin said that would be fine. He suggested to move the driveway a little closer to the northeast because the available site distance was more to the east side than the west side. He stated that was just a suggestion, not a requirement.

Mr. Werner said he did not have a problem with the condition but he would rather have the condition say that the driveway configuration be subject to the City Engineer approval.

Commissioner Finkeldei said Planning Commission saw this item last month and did not have to grant a variance because they have significant R-O-W and road frontage. City Commission chose not to accept the R-O-W because they did not expect to use it

because there were no plans to expand the street. He felt the strict application of the regulations would create an unnecessary hardship because the City put the applicant in the situation by not accepting the 60' of R-O-W that they normally would. He stated that Horizon 2020 suggests infill development and creating an infill lot that is not developable over 3' of frontage goes to the public health safety and welfare. In his opinion the intended purpose of the frontage is to protect the character of the neighborhood. He felt that by granting 2.65' variance it is in harmony with the intended purpose of the regulations. Said he felt the applicant met the three criteria set forth so he will support the variance request. As for the plat itself he believed the major issue is safety and it is clear this is an unsafe road for the people that live there. The City Commission initiated it to have it looked at. He felt it was not an argument that adding one more house would make an unsafe street more unsafe. If it is unsafe it needs to be fixed.

Commissioner Harris restated her previous condition suggestion 'the driveway shall allow for headfirst egress and/or be located as far to the northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.' She asked if slightly different wording was wanted after Mr. Werner spoke.

Commissioner Finkeldei suggested something worded like 'should have head first access and the driveway location determined by the City Engineer or the driveway shall be located as far northeast as possible on the property.'

Mr. McCullough expanded on the suggested condition saying 'the driveway shall be designed with sufficient turnaround to allow for head first egress.'

Commissioner Harris stated the condition as 'the driveway shall be designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or be located as far northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.'

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve 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.*

Unanimously approved 7-0.

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve 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~~ designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or to 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.

Unanimously approved 7-0.