

**PLANNING COMMISSION REPORT
REGULAR AGENDA --NON-PUBLIC HEARING ITEM
Public hearing on Variance Requests**

PC Staff Report
09/26/2011

**ITEM NO. 1: PRELIMINARY PLAT; FIFTH STREET BLUFF SUBDIVISION; W 5TH
ST (MKM)**

PP-07-06-11: Consider a one lot Preliminary Plat and variances related to dedication of rights-of-way and frontage for Fifth Street Bluff Subdivision, approximately 0.29 acres, located on W 5th Street near the connection of Iowa Street and W 5th Street. Submitted by Paul Werner Architects, for JMC Construction, property owner of record

STAFF RECOMMENDATION ON VARIANCES:

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, rather than the required 40 ft.

STAFF RECOMMENDATION ON PRELIMINARY PLAT:

Staff recommends approval of the Preliminary Plat of the Fifth Street Bluff Subdivision and referring it to the City Commission for acceptance of dedication of easements and rights-of-way subject to the following conditions of approval:

- 1) The preliminary plat shall be revised with the following changes:
 - a. Add the following note and include 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. Show the sight distance triangle for the driveway.
 - c. Show the Blackhills Energy gas line on the north side of W 5th Street.
 - d. Revise the existing trees shown on the plat to reflect the current site condition.
 - e. Provide 10 ft wide utility easements along the east and south sides of the lot.
 - f. Revise the floodplain note to reference the August 5, 2010 FEMA map and panel.
 - g. Remove the note regarding the changes made in June 2009 to eliminate the right-of-way.
 - h. Revise the information shown for the lot to the north to remove JMC as owner and to provide subdivision information for this lot.

Applicant's Reason for Request: Subdivision required prior to development of property.

ATTACHMENTS

- Attachment A: Previously approved preliminary plat.
- Attachment B: Sight distance study.
- Attachment C: Planning and City Commission minutes.

KEY POINTS

- This plat is being submitted following the expiration of the previously approved preliminary plat. The Planning Commission approved the plat and variances at their July 22, 2009 meeting. The City Commission accepted the dedications and upheld the Planning Commission's approval of the variances at their August 25, 2009 meeting. The applicant did not submit a final plat within the 18 month time limit provided in Section 20-809(j); therefore, the approval of the preliminary plat expired. The plat that is being considered with this application contains the same lot and variances as the previously approved 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(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.
- Section 20-810(2)(i) requires that lots conform to all applicable zoning district regulations. If the required right-of-way is dedicated, the lot conforms with the frontage requirement; however, if the required right-of-way is not dedicated, 37.35 ft of frontage is provided rather than the 40 ft required for the RS10 District.

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* – With the previous preliminary plat application, 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.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- No public comment was received prior to the printing of this staff report.

Site Summary

Gross Area: 12,127 sq. ft. (.28 acres)
Rights of Way: 0
Net Area: 12,127 sq. ft. (.28 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; detached dwellings with the exception of the lot to the west, which is undeveloped.



Figure 1. Surrounding land use and zoning. Subject property outlined.

STAFF REVIEW

History

- **April 2008** -- An application for the 5th Street Bluffs preliminary plat [PP-04-01-08] was submitted in April of 2008. During the review process, staff informed the applicant of the requirement to dedicate an additional 5 ft of right-of-way based on the requirement to provide 70 ft right-of-way for a local street in [Section 20-810(d)(4)(i)]. The applicant revised the plat to dedicate the right-of-way and, due to the shape of the lot, the amount of lot frontage then complied with the regulation in the RS10 District of a minimum of 40 ft.

Planning received public comment regarding the safety of adding another driveway to E 5th Street in this location and the City Engineer required a sight distance study and placed the following conditions on the plat to insure the safety of the driveway: the driveway be located as far to the northeast as possible, the sight distance triangle would be shown for

the driveway, and the property owner would remove all obstructions within the sight triangle of the driveway.

- **May 18, 2009** -- The Planning Commission voted 7 to 0 to approve the preliminary plat at their May 18, 2009 meeting and forwarded it to the City Commission for acceptance of dedications of easements and rights-of-way.
- **June 17, 2009** -- Per Section 20-813(f)(3) of the Subdivision Regulations, a person aggrieved by a decision of the Planning Commission under these Subdivision Regulations may appeal the decision to the City Commission. An appeal from the Planning Commission's decision was filed with the Planning Office on June 17, 2009.
- **June 23, 2009** -- The City Commission voted to not accept the dedication of right-of-way, based on the concern that right-of-way was being dedicated for which the City may have no future plans to utilize. The City Commission returned the plat to the Planning Commission and instructed the applicant to seek variances from the right-of-way and frontage requirements.
- **July 22, 2009** -- The Planning Commission heard the request and took public comment at their July 22, 2009 meeting. The Commission voted 7 to 0 to grant the variances and approve the preliminary plat and forward it to the City Commission.
- **August 3, 2009** -- An appeal from the Planning Commission's decision was filed with the Planning Office on August 3, 2009.
- **August 25, 2009** -- The City Commission accepted the appeal at their August 25, 2009 meeting and upheld the decision of the Planning Commission regarding the approval of the preliminary plat, approved the variances to the right-of-way requirement and accepted the dedications of easements.
- **February 25, 2011** -- A final plat was not submitted within the 18 month approval period provided in Section 20-809(j) of the Subdivision Regulations and no request for an extension was made; therefore, the approval expired and a new application is required.

Current Application

The Fifth Street Bluffs Preliminary Plat before the Commission at this time [PP-7-6-11] is the plat as previously approved by the City Commission, without the required right-of-way. Variances are being requested from the requirement to provide additional right-of-way and to provide 40 ft of street frontage. Based on the past action on this plat, continuing with the most recently approved plat was determined to be the appropriate process. The applicant has no objections to dedicating the required right-of-way and providing the required frontage; however, this was not the action approved by the City Commission earlier.

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. With the previously submitted Fifth Street Bluffs Subdivision, the City Engineer indicated that 5 ft of right-of-way should be dedicated. As mentioned earlier, the City Commission did not accept this dedication.

The public comment received related primarily to safety concerns. 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. These discussions occurred during the previous review of the plat. As there have been no changes to the plat or the area, there have been no additional review comments.

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. With the previous review, 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. Blackhills Energy 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. This requirement was noted in the previous staff report but was not included in the conditions. It has been added to the list of conditions.

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 is proposed with this plat. The Westar representative indicated a 10 ft wide utility easement would be preferable; therefore, the plat will be revised to provide 10 ft wide utility easements. 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 applicant provided this right-of-way originally, but the City Commission returned the plat to the Planning Commission and directed the applicant to seek a variance from this requirement.

Plat Contents

Since the previous plat was submitted and approved, tree removal has occurred on the site. The boundaries of the tree stands should be revised on the plat to reflect current site conditions. The plat notes that the property is not within the floodplain, but references out-of-date FEMA maps. The plat should be revised to reference the August 5, 2010 FEMA maps. The plat contains a note regarding the changes made in June 2009 to eliminate the right-of-way. This note should be removed as the change occurred prior to the submittal date of this plat application. Information should be added under the heading 'Variances Previously Approved' to note the date the Planning Commission approved these variances (July 22, 2009) for a previous preliminary plat of this property (PP-04-01-08). The lot to the north of the subject property is

no longer owned by JMC Construction. As this is a platted lot, the subdivision information should be included on the plat.

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.

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. If the City Commission does 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.

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

