

Memorandum

City of Lawrence

Planning & Development Services

TO: Planning Commission

FROM: Mary Miller, Planner

CC: Scott McCullough, Planning and Development Services Director

Date: For March 24, 2014 meeting

RE: Misc Item No. 2: Certificate of Survey Variance for Property at, and adjacent to, 1619 E 1818 Road.

Consider a variance associated with Certificate of Survey, CSU-13-00432, requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow the creation of Residential Development Parcels on a principal arterial with less than the required right-of-way. Submitted by Berniece Garber for Doug Garber Const. Inc, property owner of record.

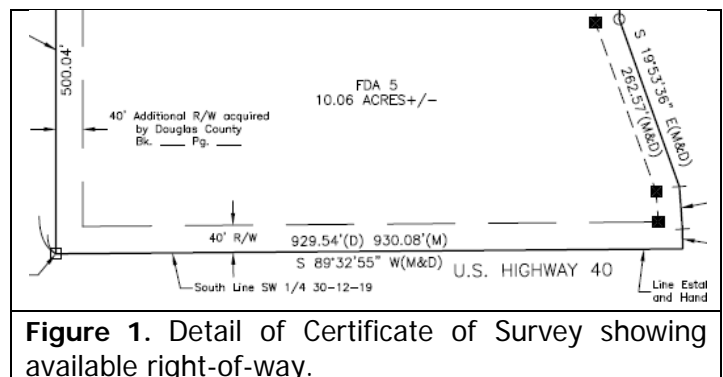
Attachment A: Certificate of Survey, CSU-13-00432

Certificates of Survey are processed administratively but Planning Commission approval is required for variances from the Subdivision Design Standards. The Certificate of Survey was recently submitted and is currently under review. A copy of the Certificate of Survey is being provided with this memo for context; however, no action is required on the Certificate of Survey.

The Subdivision Regulations state that an applicant may request a variance from the Design Standards in the Regulations in accordance with the variance procedures outlined in Section 11-113(g) [20-813(g)/City Code]. This section lists the criteria that must be met in order for a variance to be approved. The requested variance is evaluated for compliance with the approval criteria below.

VARIANCE REQUESTED: Creation of a Rural Certificate of Survey on a principal arterial with less than the required road right-of-way.

A Cluster Development Certificate of Survey is a residential land division that is permitted within the Urban Growth Area. The development must be clustered on the property, with a maximum of 60% of the property being divided. This Certificate of Survey will divide approximately 26 acres to create four Residential Development Parcels with approximately 3 acres each with 10 acres set aside for future development.



The Subdivision Regulations require that right-of-way or permanent easement for right-of-way be dedicated prior to final approval of a Certificate of Survey. Per Section 11-110(e)(5)(ii), a principal arterial requires 120 ft of right-of-way, 60 ft on each side of the centerline. KDOT indicated that the 40 ft of right-of-way currently available on the subject property's side of the centerline (80 ft total) was adequate and they would not be requiring additional right-of-way. (See Figure 1) This variance is being requested to allow the Certificate of Survey to be approved without the dedication of additional right-of-way for Hwy 40.

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

Strict application of these regulations would require the dedication of approximately 20 ft of additional right-of-way for Hwy 40 along the south border of the property. The subject property contains approximately 22 acres and has adequate area for the dedication of the additional right-of-way; however, KDOT indicated that they would not request additional right-of-way for the highway with this development. The dedication of additional right-of-way would be required when more significant development occurs. As there is no need for the right-of-way at this time, requiring the applicant to dedicate additional right-of-way would be unnecessary.

Staff Finding:

The dedication of additional right-of-way for Hwy 40 would be an unnecessary hardship upon the property owner as KDOT indicated additional right-of-way is not required at this time.

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

Right-of-way dedication is required when properties are subdivided to insure that adequate right-of-way is available for improvements to adjacent roadways. The KDOT representative indicated that additional right-of-way for Hwy 40 is not needed at this time; however, additional right-of-way would be required if more intense development were proposed.

Staff Finding:

The variance will allow the proposed land division to occur without requiring the dedication of additional right-of-way. The Certificate of Survey should note that the dedication of additional right-of-way is not required at this time, but would be required with future, more intense development to insure adequate right-of-way will be available for future improvements.

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

80 ft of right-of-way is currently provided for Hwy 40 throughout this area. Per the Subdivision Regulations, 20 ft of additional right-of-way would be needed from the subject property; however, KDOT indicated they would not require the dedication of additional right-of-way with this land division. Additional right-of-way would be required when more intense development occurs, or would be obtained when needed for future improvements to Hwy 40.

Staff Finding:

Granting of the variance will result in the creation of 4 Residential Development Parcels. One RDP contains a residence, so 3 new residences would be possible. While the right-of-way currently provided for Hwy 40 is not compliant with the Subdivision Regulations for a road classified as a 'principle arterial'; given KDOT's acceptance of the existing right-of-way width, Staff supports the requested variance. The County Engineer deferred to KDOT in this case.

STAFF RECOMMENDATION:

Approve the variance requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow a land division through Certificate of Survey CSU-13-00432 to create 4 RDPs without the dedication of additional right-of-way where the property is adjacent to Hwy 40 subject to the following condition:

1. The following notes shall be added to the Certificate of Survey:
 - a. *"The Planning Commission approved a variance from Section 20-810(e)(5)(ii) to allow the land division to occur without the dedication of additional right-of-way where the property is adjacent to Hwy 40"*
 - b. *"KDOT did not require the dedication of additional right-of-way with this land division, but indicated that additional right-of-way would be required when more intense development is proposed."*

CERTIFICATE OF SURVEY

SOUTHWEST QUARTER (SW 1/4) OF SECTION 30,
TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE
SIXTH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, KANSAS

NOTES:

- (1) Water supply will be provided by Rural Water District #3. The Residential Development parcels created by this Certificate of Survey shall not be eligible for building permits until the Rural Water District issues a water meter and documentation that a water meter has been purchased by the owner is presented to the Lawrence-Douglas County Health Department and the Douglas County Engineering Office.
- (2) Wastewater disposal will be provided by an Onsite Sewage Management System approved by the Director of the Lawrence/Douglas County Health Department or a connection to a wastewater disposal system approved by the Kansas Department of Health and Environment. A preliminary site evaluation for each septic system is required prior to a building permit issued. The septic permit must be approved and purchased prior to the issuance of a building permit.
- (3) This property division was designed in accordance with Section 20-104 of the Subdivision Regulations (Cluster Development in the Urban Growth Area).
- (4) Subject property is Zoned A (agricultural).
- (5) This certificate of Survey was not prepared for the purpose of the platting of land. No further divisions of the parcels created by this survey shall occur until the property is subdivided in accordance with all applicable Subdivision Regulations of Douglas County or the City into which it is annexed, or until another Certificate of Survey is approved and recorded with the Register of Deeds.

BY VOUCHER SUBSCRIPTION:

A Bertrice Garber, President of Doug Garber Construction, Inc., a Kansas Corporation, have caused these presents to be signed this ____ day of _____, 2014.

A Bertrice Garber

REVIEWED IN COMPLIANCE WITH K.S.A. 58-2005.

Michael D. Kelly, LS No. 866, Douglas County Surveyor

Dennis L. Handke LS No. 766

I certify this to be a true and correct copy of a survey made by me or under my direct supervision in the month of September 2013, and I further certify this survey complies with the Kansas Minimum Standards for Boundary Surveys.

Register of Deeds
County of Douglas

This is to certify that the instrument was filed for record in the office of the Douglas County Register of Deeds on this ____ day of _____, 2014, and is duly recorded as _____ page _____

Approved as a Certificate of Survey, under the Minimum Regulations of the City of Lawrence & the Unincorporated Area of Douglas County.

Planning Director _____ Date _____

Notes:

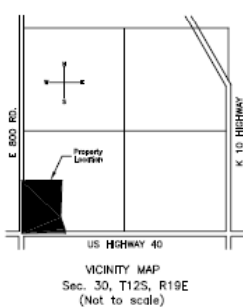
The Cross-Access Easement shall become public right of way when property is annexed into the City of Lawrence and the governing body has accepted the dedication. A Cross-Access Easement and Maintenance Agreement has been filed by separate instrument with the Douglas County Register of Deeds, Book _____ Page _____.
Seepage disposal will be provided by means of individual septic systems installed on each Residential Development Parcel. The septic systems will be abandoned upon annexation into the City's sanitary sewer system. Restrictive Covenants are recorded at the Douglas County Register of Deeds, Book _____ Page _____.
On October 27, 2014, the Planning Commission approved a variance to allow the Certificate to have two access points: the Cross Access Easement on E 800 Road and the access on E 818 Road for the existing house on RDP 2. This approval was subject to the condition that the Certificate of Survey be revised so that the Cross Access Easement extends to the East to provide future access to Residential Development Parcel No. 2. In the event the intersection of E 818 Road and Highway 40 is removed, the additional drive does not need to be constructed with this drive.

WITNESSETH:

State of Kansas
County of Douglas

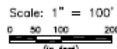
Be it remembered that on this ____ day of _____, 2014, before me, a Notary Public in and for said County and State came A. Bertrice Garber, President of Doug Garber Construction, Inc., to me known personally to be the same person who executed the foregoing instrument and acknowledge the same as their free act and deed.

Notary Public _____ My Appointment Expires _____ Date _____



Legend

- = Found 5/8" Rebar set by Switzer in 1984
- = Set 1/2" x 24" Rebar & D 10 Cap Handke 766
- = Found 5/8" rebar with Douglas County Public Works Cap
- = Found 1/2" rebar with cap #766
- △ = Found 1/2" rebar from References
- = Measured Distance
- R/W = Right-of-way
- (M) = Measured Distance
- (D) = Dead Distance



BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST QUARTER ASSUMED AS IN 07°00'00" E

DESCRIPTION - ORIGINAL TRACT:

A tract of land in the West Half of the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Beginning at the Southwest Corner of said Southwest Quarter, thence N 0 degrees 00 minutes 00 seconds East (assumed bearing) along the West line of said Southwest Quarter, 1121.04 feet (mean) 1121.00 feet (dead); thence North 89 degrees 32 minutes 04 seconds East (mean) N 89 degrees 32 minutes 50 seconds East (dead), 860.63 feet (mean) 860.63 feet (dead); thence South 1 degree 45 minutes 36 seconds West (mean) South 1 degree 45 minutes 42 seconds West (dead), 782.49 feet (mean) 782.45 feet (dead); thence South 19 degrees 45 minutes 36 seconds East (mean & dead), 282.57 feet (mean & dead); thence South 4 degrees 12 minutes 02 seconds East (mean & dead), 62.80 feet (mean & dead); thence South 0 degrees 27 minutes 05 seconds East (mean & dead), 29.07 feet (mean) 28.87 feet (dead) to the South line of said Southwest Quarter; thence South 89 degrees 32 minutes 50 seconds West (mean & dead) along the South line of said SW 1/4, a distance of 930.08 feet (mean) 929.54 feet (dead) to the point of beginning. Said tract containing 22.18 acres, more or less, subject to said rights-of-way and easements of record.

DESCRIPTION - CROSS ACCESS EASEMENT:

A tract of land in the Southwest Quarter (SW 1/4) of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, being 60.00 feet wide with the centerline being described as follows: Commencing at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East (assumed bearing) along the West line of said Southwest Quarter, 500.04 feet; thence North 89 degrees 32 minutes 04 seconds East, 40.00 feet to the Point of Beginning; thence North 89 degrees 32 minutes 04 seconds East, 291.51 feet; thence North 1 degree 45 minutes 36 seconds West to the left having a radius of 40.00 feet, a chord bearing of North 45 degrees 13 minutes 48 seconds East, a chord length of 65.29 feet, an arc length of 84.87; thence North 0 degrees 55 minutes 34 seconds East, 278.58 feet; thence North 89 degrees 31 minutes 32 seconds East, 60.02 feet to the point of termination.

DESCRIPTION - RESIDENTIAL DEVELOPMENT PARCEL 1:

A tract of land in the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 838.04 feet to the Point of Beginning; thence contributing North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 285.00 feet; thence North 89 degrees 32 minutes 04 seconds East (mean) North 89 degrees 32 minutes 50 seconds East (dead), 461.18 feet; thence South 0 degrees 55 minutes 34 seconds West, 285.00 feet; thence South 89 degrees 31 minutes 32 seconds West, 456.55 feet to the point of beginning. Said tract containing 3.08 acres, more or less.

DESCRIPTION - RESIDENTIAL DEVELOPMENT PARCEL 2:

A tract of land in the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 1121.04 feet; thence North 89 degrees 32 minutes 04 seconds East (mean) North 89 degrees 32 minutes 50 seconds East (dead), 461.18 feet to the Point of Beginning; thence contributing North 89 degrees 32 minutes 04 seconds East (mean) North 89 degrees 32 minutes 50 seconds East (dead), 399.47 feet; thence South 1 degree 45 minutes 36 seconds West (mean) South 1 degree 45 minutes 42 seconds West (dead), 331.93 feet; thence South 89 degrees 32 minutes 13 seconds West, 294.37 feet; thence North 0 degrees 55 minutes 34 seconds East, 332.90 feet to the point of beginning. Said tract containing 3.03 acres, more or less.

DESCRIPTION - RESIDENTIAL DEVELOPMENT PARCEL 3:

A tract of land in the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 500.04 feet to the Point of Beginning; thence contributing North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 338.00 feet; thence North 89 degrees 31 minutes 30 seconds East, 338.04 feet; thence South 0 degrees 55 minutes 34 seconds West, 335.15 feet; thence South 89 degrees 32 minutes 04 seconds East, 391.10 feet to the point of beginning. Said tract containing 3.04 acres, more or less.

DESCRIPTION - RESIDENTIAL DEVELOPMENT PARCEL 4:

A tract of land in the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 500.04 feet; thence North 89 degrees 32 minutes 04 seconds East, 391.13 feet to the Point of Beginning; thence North 0 degrees 55 minutes 34 seconds East, 335.15 feet; thence North 89 degrees 31 minutes 32 seconds East, 60.02 feet; thence South 0 degrees 55 minutes 34 seconds West, 47.88 feet; thence North 89 degrees 22 minutes 13 seconds East, 394.37 feet; thence South 1 degree 45 minutes 36 seconds West (mean) South 1 degree 45 minutes 42 seconds West (dead), 280.54 feet; thence South 89 degrees 32 minutes 04 seconds West, 449.89 feet to the point of beginning. Said tract containing 3.08 acres, more or less.

DESCRIPTION - FUTURE DEVELOPMENT PARCEL 5:

A tract of land in the Southwest Quarter of Section 30, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, and more particularly described as follows: Beginning at the Southwest Corner of said Southwest Quarter, thence North 0 degrees 00 minutes 00 seconds East along the West line of said Southwest Quarter, 500.04 feet; thence North 89 degrees 32 minutes 04 seconds East, 840.99 feet; thence South 1 degree 45 minutes 36 seconds West (mean) South 1 degree 45 minutes 42 seconds West (dead), 151.02 feet; thence South 19 degrees 45 minutes 36 seconds East, 282.57 feet; thence South 4 degrees 12 minutes 02 seconds East, 62.80 feet; thence South 0 degrees 27 minutes 05 seconds East, 29.07 feet (mean) 28.87 feet (dead) to the South line of said Southwest Quarter; thence South 89 degrees 32 minutes 50 seconds West along the South line of said Southwest Quarter, 930.08 feet (mean) 929.54 feet (dead) to the point of beginning. Said tract containing 10.06 acres, more or less.

DENNIS HANDKE SURVEY

Project 13-12

Phone: 766-296-047

Address: 1620 NW 58th Terrace
Topeka, KS 66618