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.

Figure 1. Detail of Certificate of Survey showing available right-of-way.
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 ‘principal 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.”