

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
DECEMBER 7, 2017

Case No. 17-199

A request by Engineering Surveys and Services (agent) on behalf of TKG St. Peters Shopping Center, LLC (owners), for approval of a one-lot minor subdivision of their properties on the west side of Providence Road, between Locust Street and Elm Street. The parcel is 3.26 acres and currently undeveloped. The property is zoned M-DT (Mixed-Use Downtown District). The applicant is also seeking a design adjustment regarding the required right-of-way dedication for Providence Road.

MR. STRODTMAN: May we have a staff report, please.

Staff report was given by Mr. Rusty Palmer of the Planning and Development Department. Staff recommends approval of the final plat of University Centre Subdivision with design adjustment.

MR. STRODTMAN: Thank you, sir. Thank you for that. Commissioners, questions of Mr. Palmer? Yes, ma'am?

MS. BURNS: I did have one question, and I don't know if this is the time to ask about this. I wondered about the pedestrian crossing at Locust as you're heading into the property. There's increased pedestrian traffic because of Lucky's, and I can only assume with what's coming forward, I don't know if that was discussed in this or if that would be a future discussion.

MR. PALMER: It wasn't really discussed as part of this. If we can go back to the plat. The area here, it's kind of hard to understand what's going on. There's a ten-foot waterline easement that's being dedicated by this plat here. Within that remainder of that little corner there, that's actually an ingress and egress easement. What I'm told is that's sufficient for -- for what will be done in the future there, and it'll be -- I believe -- is that a MoDOT project -- the pedestrian project?

MR. ZENNER: I'm unaware that -- I'm unaware that we have anything, so I would imagine --

MR. PALMER: Right.

MR. ZENNER: -- it would be a MoDOT project if we're not directly involved in some pedestrian crossing here at this point.

MS. BURNS: I drive through that intersection multiple times during the day and pedestrians are trying to get across, and most of the traffic is turning to head south on Providence Road. And I think sometimes you see concern as pedestrians -- if someone is making that left turn out of Locust to head south onto Providence. It would -- I guess it would be nice if it was a clearer marked or a signalized intersection with a crosswalk and maybe a pedestrian crossing, but I'll tell MoDOT that.

MR. STRODTMAN: Additional questions, Commissioners? I have a quick question, Mr. Palmer.

Is the TCE a typical requirement that we would put in place with that as part of our approval?

MR. PALMER: I believe they're usually more between MoDOT and the property owner, but, at this point, MoDOT saw the need for it and asked that it be a condition.

MR. STRODTMAN: Okay. I was just curious. I didn't -- I had not seen that before. I was just --

MR. ZENNER: And this isn't the first instance in which we have had a TCE raised as part of platting issue. Over on College, we had a similar situation with the reconstruction of the fraternity house just north of Sanborn Hill. There was a -- there was a necessity for the TCE, so somewhat of the language in the staff report that Mr. Palmer prepared was similar to language that we had prepared for that previous platting action.

MR. STRODTMAN: Thank you. This is -- it's not a public hearing, but it is, as in past practices, we will open this up to anyone that's in the audience that would like to come forward and give us any relevant information. We just ask that you give us your name and address first.

MR. REID: Good evening. My name is Tim Reid; I'm with Engineering Surveys and Services. We're -- we agree with the staff report and the staff recommendation. The condition of the temporary construction easement, we just want to make sure it's understood that it'll be a five-foot temporary construction easement and we want to put a term on the -- a length on the duration, so we'd like it to run through 2018. I believe the project is supposed to happen in summer or fall, but the property owner doesn't want to let this condition linger on forever. So they're happy to grant a temporary construction easement for this sidewalk construction, but we just want it to be the five-foot width and through 2018.

MR. STRODTMAN: Commissioners, any questions of this speaker? I see none. Thank you, Mr. Reid.

MR. REID: Thank you.

MR. STRODTMAN: Anyone else like to come forward and speak with us? I see none. Commissioners? Yes, Mr. MacMann?

MR. MACMANN: I have a redirect for staff. Mr. Palmer, is a TCE that extends throughout calendar 2018 sufficient time?

MR. PALMER: MoDOT has indicated a project completion date of November 2018, so I would assume --

MR. MACMANN: Well, we -- if MoDOT runs over a month or two months, is that a problem? Do we have -- do we have a problem there Mr. Reid?

MR. PALMER: I think that would have to be part of the discussion when the TCE is granted of whether or not an overrun is permitted.

MR. MACMANN: And that will be included in the ordinance when it is -- is that correct?

MR. PALMER: No, I don't believe so. That will be part of the --

MR. MACMANN: That will be part of the development agreement?

MR. PALMER: The condition will be that they grant the easement and then, I believe, beyond that, it would be left to the -- an agreement between MoDOT or the City, whomever is asking for the

easement and the property owner.

MR. ZENNER: I would suggest to -- if MoDOT's intention is to have the project completed by November of 2018, not begun -- obviously, you're not going to make sidewalk improvements in the winter -- that TCE would probably be obtained in the spring to early summer, which, at that point, giving maybe adequate time. If the TCE is not -- if, for some reason, MoDOT, however, runs into difficulties in getting to that project due to other projects within its maintenance world, a time restriction upon the dedication or the provision of the TCE may present a problem. The TCE and the construction project are outside of the City's control, however. A much simpler approach would have been to have had the TCE granted at this time when the plat is being produced to then be, at some point, abandoned after the project has been completed. What we're asking for and what this is -- what the condition is similar to is similar to our College Avenue project where the City was not asked to restrict when it could come or MoDOT could come and ask for that TCE. It was all dependent upon when they could get to the construction project. We do have a defined completion date, but we don't know what may happen between now and that point. I would suggest that if, at a minimum, to ensure that we have some overlap possibly due to a project overrun or delay, that the TCE have a specified time frame of probably 18 months at which point that would put it into the spring of '19, to which they could then acquire it if necessary, not just the calendar year of '18. That would be the suggestion as an alternative. I don't know if that impacts the applicant or the applicant's client by extending it for those additional six months, but that would be a question to ask them. That would be our take, I think, that we have some flexibility. I will be quite honest to tell you that while this recommendation may be forwarded to City Council, City Council and the law department may determine that they are not going to approve anything with a time limitation for a TCE for a pending project. And while the request is going to be made here, may be included in your recommendation, and may be reiterated at Council, I don't know if it will make the ordinance.

MR. MACMANN: All right. I just -- thank you for clarifying that because I -- given what I do for a living and given what I've seen on construction projects -- Mr. Reid, no disrespect intended.

Mr. Chairman, can I call Mr. Reid back up, please?

MR. STRODTMAN: Yes, sir. Mr. Reid? Would you also give us your name and address, please.

MR. REID: Sure. My name is Tim Reid, a land surveyor with Engineering Surveys and Services.

MR. MACMANN: Just to follow up a little bit. It's just -- you and I both know that may be -- that may be too tight. That may not work, and that's why I did that follow-up question, so --

MR. REID: Okay. Well, and that's not acceptable to the property owner because the property owner has all sorts of things going on with this site, and they just don't -- they just don't want a -- a --

MR. MACMANN: A lingering --

MR. REID: -- condition that long lingering. They're happy to discuss with MoDOT their -- MoDOT's needs. MoDOT may not even need a construction easement to build this sidewalk. So if we can just limit it to the five-foot width for -- for the year 2018 and then, at some point, if MoDOT sees that that's not going to be reasonable, they can approach the property owner to see if they can do something

to -- to make it work or extend the construction easement for another few months, but 18 months is too long to -- for the property owner --

MR. MACMANN: And the reason -- okay. The reason I brought that up is because you -- you set that condition forward and that's something that we have almost no control over. Right?

MR. REID: Well, this is new to me, also -- the -- a condition for a temporary construction easement. Usually, MoDOT will just discuss that with the property owner and perhaps this was just an easy mechanism for MoDOT to -- to tag this onto the plat.

MR. MACMANN: To put here, yeah.

MR. REID: Yeah.

MR. MACMANN: All right. Well, thank you very much.

MR. REID: Thank you.

MR. MACMANN: I just wanted to let you know that we might be able -- not be able to guarantee that.

MR. STRODTMAN: Commissioners, additional discussion? Motion? Questions for staff? Clarification, if needed? Ms. Rushing?

MS. RUSHING: My question is if you don't believe that the temporary construction easement is necessary, how do we separate that out for purposes of voting on the application?

MR. PALMER: MoDOT's comment was that it would be necessary.

MS. RUSHING: But that's MoDOT's -- I mean, that's up to them, isn't it? I mean, they -- they have the ability to get a construction easement if they want it.

MR. PALMER: Yeah, potentially. I mean, it -- like I said, it's always going to be -- it's typically a -- an agreement between the -- between MoDOT and the property owner, and they would just seek that as a standalone easement on their own and not as a condition of a plat. That's -- that can be done, so --

MS. RUSHING: So is this something the City normally does on behalf of MoDOT or is this an unusual circumstance?

MR. PALMER: Well, this is MoDOT make a request for the -- for the TCE condition.

MR. ZENNER: As part of our overall review team.

MR. PALMER: As part of -- yeah.

MS. RUSHING: But they're doing it through our approval process?

MR. ZENNER: As part of our review team, Ms. Rushing. So MoDOT is requested to submit comments as it relates to platting actions within the City of Columbia along its primary roadway frontages. So not unlike any other reviewing department, MoDOT is making a request that the plat's approval be conditioned upon the issuance of a TCE. In this instance, we would consider them an extension of the City of Columbia. Given the fact that this property is being replatted, the TCE is being asked for outside of their right-of-way, which is why it must be identified. As Mr. Palmer has pointed out, that TCE is within an existing ten-foot platted City of Columbia utility easement. That does not necessarily mean that that utility easement was reserved for the purposes of allowing a temporary construction easement for a

sidewalk project, so you will have overlapping easements in place for two different purposes. And that is why this is being requested as part of the platting action. It is the appropriate location to request that this be done. If the City of Columbia was doing the project, we would require the TCE to be shown on the plat probably at this point.

MS. RUSHING: And I understand that.

MR. ZENNER: So --

MS. RUSHING: But this isn't the City of Columbia that's requesting the easement.

MR. ZENNER: They are requesting it, though, as part of the review team as though they were part of the City of Columbia.

MR. STRODTMAN: Commissioners? Mr. Stanton?

MR. STANTON: This is a unique situation and being the fact I'm in construction, I would feel uneasy about putting some kind of pressure on MoDOT. You don't know what's there, you know, what might happen. You -- we talked about scheduling. We don't know about, you know, this may not be a priority for MoDOT at this particular time. I wouldn't want them to start and then they have some unforeseen situation where they may need a little bit more time and then now it's -- now they're in the jaws of the owner to -- to maintain that easement. Unless there's something -- I mean, like, normal practice. -- hey, I get -- I need -- I need the construction easement until the end of -- end of the project. The project is going to have its own schedule anyway. Every project does, has a -- has a completion time and a number of days to complete it. I think that's sufficient enough to deal with this, and I'm almost inclined to not even approve this if it's that much of a problem.

MR. STRODTMAN: Commissioners, additional discussion? Mr. MacMann?

MR. MACMANN: I have a question for staff to follow up on what Mr. Stanton said. We can approve this without the TCE?

MR. ZENNER: As is any recommendation of a reviewing department, yes, you can. We would not advise that. The request has been made that -- MoDOT could negotiate for the easement itself, and that would be -- that is the prerogative of the Planning Commission. It is a request of a reviewing department. There is not a regulatory obligation for that TCE to be provided.

MR. MACMANN: I just -- and I appreciate this, Mr. Zenner. I'm just -- I think we're almost in the position that it feels as if -- and Mr. Stanton and I both work in construction. It feels as if we're being asked to sort of half promise something that we can't possibly influence or deliver, and we have no influence over.

MR. ZENNER: Well, and I --

MR. MACMANN: Even if the City Council were to approve it, that would still --

MR. ZENNER: Hence my -- hence my original comment that a -- a time-frame restriction on the request to have a TCE established, I don't know if our City's legal department would accept that as part of what the ordinance that would be produced to approve this plat would actually include. It is a condition -- it is a condition that a TCE be granted upon request. I am -- have recently become aware that they're

desiring a time-frame restriction, so this is news to us, as well, not having had an opportunity by which to react with the -- and to the asking for that, is that reasonable. I do not believe we want to delay the processing of this plat and quite honestly --

MR. MACMANN: I have no desire to delay the plat. I'm just -- I --

MR. ZENNER: If it's the Commission's desire that because it does seem, as you have said, half promising something that may not be able to be delivered, if you want to leave that request off the table and not as a condition, as it has been presented, that is the Commission's prerogative. You can -- you could approve it --

MR. MACMANN: But would the -- could the applicant, just to revisit that quickly, the applicant is more than welcome to revisit that with legal, MoDOT, or Council?

MR. ZENNER: That is correct. And this item will not be presented to City Council until the second meeting, I believe, in January, so, I mean, we have adequate time in which to have MoDOT generate a request within the 2018 calendar year for a TCE after they've had an opportunity to discuss with the applicant --

MR. MACMANN: Let me revisit one thing real quick. We have -- and done this this year, I know, have approved something and then there have been other details worked out before it went to Council?

MR. ZENNER: That is correct. And that is -- and that's, I guess, what I'm suggesting. If the Commission is uncomfortable with approving the plat, if you're willing to approve the plat, but you're uncomfortable with approving it with the condition, don't approve it with the condition. We will, as a staff, and I imagine the applicant will -- or the applicant won't. I'm sure we will, as a staff, contact MoDOT, explain to them what has transpired. MoDOT then needs to take action in order to secure that temporary construction easement through their means, not through the means of the platting action. Now, if MoDOT wants to send a representative to City Council and say, no, you need to approve the plat with the condition, that's MoDOT's choice.

MR. MACMANN: All right. Let me back up one quick -- though, Commissioner Loe, you have a question. I was about to make a motion.

MS. LOE: No. I think Mr. Zenner answered it in his comments. Thank you.

MR. STRODTMAN: We will take a motion, Mr. MacMann.

MR. MACMANN: I would like to make a motion, and Attorney Caldera, if you could help me here a little bit. I want to make sure I get this correctly. I would like to make a motion to approve this plat as is without the TCE condition.

MR. CALDERA: What about --

MR. ZENNER: The design adjustment, sir.

MR. PALMER: The design adjustment.

MR. CALDERA: Are you seeking to approve the final plat --

MR. MACMANN: Plat.

MR. CALDERA: -- with the design adjustment, but without the additional condition of the TCE?

MR. MACMANN: Correct.

MR. CALDERA: That's -- that's the motion you need to make.

MS. RUSHING: Second.

MS. LEE: He's revising it.

MR. STRODTMAN: Are you going to redo -- are you going to revise your motion?

MR. MACMANN: I just want to make -- I want to make sure that we've got it -- we have enough uncertainty here. I just wanted to add a little bit more in.

MR. STRODTMAN: Ms. Rushing, I'll remove your second then. Okay. Go ahead, Mr. MacMann. We'll start over.

MR. MACMANN: I move to approve the plat of University Centre Subdivision and the requested design adjustment subject to the application -- wait. I'll withdraw the last section. I move to approve the plat of the University Centre Subdivision and requested design adjustment. That's Case 17-199.

MR. STRODTMAN: Thank you, Mr. MacMann. Do we have a second?

MS. RUSHING: Second.

MR. STRODTMAN: Ms. Rushing, thank you.

MR. MACMANN: Thank you.

MR. STRODTMAN: Commissioners, further discussion or any clarification needed on this motion? Mr. Stanton?

MR. STANTON: They need the construction easements. That needs to be made a win-win situation between MoDOT and the owners to make this go through -- my opinion.

MR. STRODTMAN: Thank you. Any additional questions or comments, Commissioners? If not, Ms. Secretary, when you have a chance for a roll call.

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Mr. Harder, Mr. MacMann, Mr. Strodman, Ms. Rushing, Ms. Russell, Ms. Burns. Voting No: Mr. Stanton. Motion carries 7-1.

MS. BURNS: Seven to one, motion carries.

MR. STRODTMAN: Thank you, Ms. Burns. Our recommendation for approval will be forwarded to City Council for their recommendation.