

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
JULY 6, 2017

Case # 17-157

A request by A Civil Group (agent) on behalf of Maddox and Robinson Investments, LLC (owner) for a waiver from Section 24-35, which requires sidewalks on property zoned commercial or multi-family and is located along an arterial or collector street, to waive the construction of approximately 60 feet of sidewalk located along Primrose Drive. The subject site is currently zoned R-MF (Multiple-Family Dwelling), and is located on the north side of Primrose Drive, approximately 500 feet east of Gardner Drive.

MS. LOE: May we have a staff report, please?

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff recommends denial of design adjustment to Section 29-5.1(d.2.i) and denial of the request to waive Section 24-35 in order to waive the sidewalk requirement for the subject site.

MS. LOE: Thank you, Mr. Smith. Are there any questions for Mr. Smith?

MR. HARDER: I have a question.

MS. LOE: Mr. Harder?

MR. HARDER: Is there only parking allowed on one side of Primrose or is it allowed on both sides?

MR. SMITH: I don't know if I know the answer to that question. Generally, collectors there is limited parking on that, but I would have to check with Public Works. We did not -- I did not observe any cars parked on the collector, so I'm going to guess that there is no parking allowed on that collector.

MR. HARDER: Thank you.

MS. LOE: Any additional questions? Seeing none. Again, this is a subdivision project, so even though it is not part of our public hearing portion, we -- if there's anyone in the audience that would like to speak on this matter, we would welcome any information you might have that might help our understanding

MR. GEBHARDT: Thank you. My name is Jay Gebhardt; I'm a civil engineer and a land surveyor with offices at 3401 Broadway Business Park Court with A Civil Group. I have some pictures I would like to hand out. If you would please take one of each and pass it down the line, I would appreciate it.

MR. SMITH: And, Jay, I have the exhibit that you submitted up too, if you wanted me to pull up

anything out of that.

MR. GEBHARDT: All right. Thank you. And thanks for the staff for the report. Gosh, I hate sidewalk variance requests. I hate to come here and ask for them. But when we started this project, I saw this tree and I remember it from when I was a kid riding the school bus. It's -- it's a significant tree. It's 72 inches at the base, and it has two branches -- one 48 inch and one 36 inch. And if this tree had been like in the middle of this when we were building sidewalk on both sides of it, I would have looked at this differently too, but our request is to build all the sidewalk except the last 60 feet. And that last 60 feet is what impacts the tree. And I don't want to be responsible for hurting this tree. And that is why we are requesting this. The CIP does show this as an unfunded project and it shows the sidewalk on the north side, but having experience designing sidewalks for Public Works when I worked for the City, I know when we get -- you get into the design of this there is going to be a lot of considerations and input from the neighbors and that. So to say that the sidewalks are all going to be on the north side because the majority of it is on is a good plan to start with, but that's just the starting point of -- of any plan. I've also talked to Jake Ray with Public Works who is the traffic engineer to see if there's any request for traffic calming projects on Primrose. It appears there are -- have been requests and those are going to be taken up to the City Council later this year or the beginning of next year. That could have an impact too because a mid-block crosswalk and a calming -- traffic calming right in that sharp curve kind of where our driveway is -- could eliminate and allow a switch of the sides. So the pictures I handed out I think are important because -- as engineers we're not photographers, but we were taking pictures of the base and the sidewalk and the drainage and all that stuff, but it -- it's just a really impressive tree, and the second picture I handed out shows the -- you know, the sidewalk is pointed right at it. There's -- there's really no way to do that. And then the aerial photo kind of shows you the mass of the tree in the wintertime. So not to say -- the City staff, the arborist, and that, but construction is a messy business. We don't get in with hand shovels and dig -- build sidewalks with little, you know, shovels and stuff. They're going to bring a machine in. They're going to excavate this. They're going to compact the soil all around it. We've got to extend the pipe under the road and bring fill in for that. And I can almost guarantee you, we will not kill the tree when we first get there or right after we leave, but I -- I know we'll have an impact on that tree in three or four or five years down the road. I know it's a Sycamore and it probably was a wee tree that just grew up in the right-of-way and no one ever mowed it down, and that's why it's here. But it is, you know -- I think it is worth saving. And I think that's the purpose of asking for variances really. I mean, we have all these rules that -- hardship and not being self-created and that, but it's to allow people like you to look at a situation like this and say does it make sense for 60 feet of sidewalk -- to end 60 feet shorter to take this tree out. And my clients are willing to give a payment in lieu. We did an estimate of \$10,890, something like that, and we're willing to cut a check to the City for that amount. This isn't about money or trying to save money. They really -- no one wants to go to that neighborhood and say we're going to cut this tree down because it's kind of a -- it was always kind of the gateway. We always waited for the bus to hit that limb when we went through because it was just always there. But -- so at any rate

it's not about money. If there's a way to make a payment in lieu, we're willing to do that. We can negotiate that with the City Council, if that's appropriate. And at that, I would be glad to answer your questions or I can keep talking.

MS. LOE: Are there any questions for this speaker? Mr. MacMann?

MR. MACMANN: Thank you, Ms. Loe. Hello, Mr. Gebhardt. How are you?

MR. GEBHARDT: I'm good.

MR. MACMANN: You had mentioned that Primrose was on traffic calming, and, I'm sorry, I don't remember all 63 of those off the top of my head. Do you know where it is on that list?

MR. GEBHARDT: No, I do not. And Jake said that it's something that's not -- may come up this year to the City Council or maybe at the beginning of next year before it does. So if that give you an idea of --

MR. MACMANN: That should be --

MR. GEBHARDT: -- priority --

MR. MACMANN: -- top ten, fifteen, if that's -- maybe five or ten, if it is that high. I honestly don't know. Okay? I'm just trying to get a -- a -- trying to get some understanding here. And it's on the six to ten year CIP, which is unfunded.

MR. GEBHARDT: Unfunded.

MR. MACMANN: I currently don't have any more questions for Mr. Gebhardt, but I might have some later.

MS. LOE: Thank you, Mr. MacMann. Any additional questions for this speaker? I don't see any.

MR. GEBHARDT: Thank you.

MS. LOE: Thank you, Mr. Gebhardt. Discussion of Commissioners? Again, let's go through the disclosure. So at this time I would like to ask any Commissioner who has had any ex parte prior to this meeting related to Case 17-157, please disclose that now so all Commissioners have the same information to consider on behalf of the case in front of us.

MS. RUSHING: I don't have a disclosure. I just have --

MS. LOE: No disclosures.

MS. RUSHING: -- a comment.

MS. LOE: Okay. Seeing none. Ms. Rushing, did you have a comment?

MS. RUSHING: I -- I do. I understand that -- their concern for the tree. As a property owner, however, were this tree on my property, I think there would be a need for significant work on the tree in order to preserve it as a beautiful tree. It's -- it's not in that shape right now. And as someone who walks a lot in this City, I can tell you that it's really disconcerting to have to step off of a sidewalk into the street. And so I would not be in favor of granting this variance.

MR. HARDER: I have --

MS. LOE: Mr. Harder?

MR. HARDER: I would also -- I would have to agree with that as well too. I don't, you know, live

in the area, and it, you know -- to just, you know, go around it, Primrose has some pretty fast drivers sometimes. They use it as kind of a cut road. I -- I would prefer to have a sidewalk there as well too. It's a tough choice though, I will admit.

MS. LOE: Mr. Toohey?

MR. TOOHEY: I've got a question for staff. So since I've been on Planning and Zoning, this is a first time anyone has offered to do a payment in lieu of. So would they -- if that was to be approved, would they negotiate that amount at the Council level?

MR. SMITH: I -- I will take the request to Council. Right now the UDC doesn't have any provisions for us recommending fee in lieu. The only exception to that is the policy statement that we have from Council on sidewalk variances on unimproved streets, so streets without curb and gutter. So this one has curb and gutter, so we don't necessarily have any -- any direction on that. So we'll take their estimate of cost that they supplied for what it would cost to finish the sidewalk, we'll take it to Council, and we'll make sure and explain that they're offering that, but it will be Council's decision whether or not to accept that and how it would be appropriated, in my opinion anyway.

MS. LOE: Mr. MacMann?

MR. MACMANN: I have a follow-up with staff, if I may. Have any of these neighbors addressed this tree issue or in any way addressed this project?

MR. SMITH: I have received no correspondence, but this type of project would not have warranted any type of --

MR. MACMANN: Public information?

MR. SMITH: -- public information going out to residents. So they would not be aware to the -- the variance being requested unless they keep up with the agenda on the Planning and Zoning.

MR. MACMANN: As all good citizens should.

MR. SMITH: Good citizens should.

MS. LOE: Mr. Stanton?

MR. STANTON: This is for staff and even for A Civil Group -- whoever can answer it best. What's the condition of that inlet box there? Does it go into a creek? Does it go into a pipe? What --

MR. SMITH: I'll let Mr. Gebhardt address that and if there is any follow up, I'd be happy to answer that.

MR. GEBHARDT: Yes. So this creek crosses Primrose from the north to the south, and there's a pipe just on the other side by that tree that leads into this inlet, and the water drops in the inlet and when it goes under the road, and there's another inlet, and then it goes and it crosses under. So it's a fairly significant sized pipe, but it's not -- I think it's a 36 or a 48, something of that size.

MR. STANTON: So this tree hasn't affected that inlet box at this point at all?

MR. GEBHARDT: No. No, it hasn't. There is a flume next to this tube --

MR. STANTON: Yeah, I see that.

MR. GEBHARDT: So I don't think there's any drainage -- this isn't a critical area on the drainage

plan.

MR. MACMANN: So there's -- if I may just real quickly. There's no flooding going on?

MR. GEBHARDT: Not that I'm aware of, no.

MR. MACMANN: Staff, are you aware of any backup flooding storm water issues?

MR. SMITH: Not that I'm aware of. I would add that our -- our staff -- our site development staff did indicate that the site plans would probably be -- need to be revised to have a -- a different type of inlet at this location given the -- the current condition of it, so I think that is added in the estimate of cost. So I think that inlet is meant to be replaced.

MR. STANTON: With or without the variance?

MR. SMITH: If the sidewalk is constructed, the inlet will need to --

MR. GEBHARDT: If we build the sidewalk --

MR. SMITH: -- replaced.

MR. GEBHARDT: -- we're going to have to tear that part of the street out and replace the inlet --

MR. STANTON: Replace the inlet --

MR. GEBHARDT: -- with a Type M Inlet, which sets back from the curb. It doesn't sit in the curb like that, and which will impact the tree even more. So basically if we build a sidewalk, we will remove the tree. That's what we'll almost have to do to do that. And I have not talked to the neighbors because I didn't want to play that game with you guys where I load a bunch of neighbors down here to you all, but that would probably be my next step with City Council is to talk to some neighbors, and if they feel strongly about it, to have them come down and support the variance.

MR. STANTON: But you don't see any structural issues with that tree being there in the future or anything else?

MR. GEBHARDT: Reasons why --

MR. STANTON: And for instance --

MR. GEBHARDT: -- might have to be removed in the future? Other than it dying, no, I don't. I don't see it impacting the infrastructure, except sidewalk, of course -- sidewalk.

MR. STANTON: Thank you.

MR. GEBHARDT: Thank you.

MS. RUSSELL: I have a question for staff, and maybe Jose. I mean, if the City comes along and wants to do a sidewalk -- and the whole neighbor -- and does the tax for the sidewalk and the City Council has already accepted a fee in lieu of, what would happen to this tree? Would they go around the tree? Would the tree be destroyed?

MR. SMITH: If the sidewalk is installed on the north side, the City would -- would almost 100 percent positive remove that tree.

MS. RUSSELL: Whether there's been a fee in lieu of to save it or not?

MR. SMITH: Correct. The fee in lieu would be to absolve them from constructing it now, and the City would accept the responsibility -- financial responsibility for building this section --

MS. RUSSELL: For it later --

MR. SMITH: -- in the future.

MS. RUSSELL: Okay.

MR. STANTON: And it offsets the cost.

MS. RUSSELL: Okay.

MR. ZENNER: And -- and if I -- if I -- I would like to add. I'm in 24-35 right now of the City Code. And I'm going to read Paragraph C, specifically as it relates to this request. I believe Mr. Smith indicated that the UDC provision prohibits an individual -- or requires that no certificate of occupancy may actually be issued for a building along a collector or an arterial. That's referred to in Paragraph B of 24-35. But Paragraph C of 24-35 reads upon application of the property owner, the City Council shall waive the requirement of this section which refers to sidewalk construction being required along a collector or an arterial provided plans for a construction of a sidewalk if the Council determines that the sidewalk is not needed or that the impact of the proposed development does not justify the requirement that the sidewalk be constructed or that there is a reasonable likelihood that the sidewalk would have to be removed and reconstructed in the near future. The granting of the waiver shall not affect the power of the City Council to later install sidewalk adjacent to the property or levy special assessment against the property for construction of the sidewalks. This particular section contains four paragraphs, A, B, C and D. D are the criteria that Mr. Smith's report went over. C basically goes over what the Council's authorization was, and in this particular section, there is no indication of a -- a -- of a fee in lieu of being an available option. Our sidewalk policy standard that we have for unimproved streets allows for that. This is not an unimproved street. Unimproved streets are those that do not have curb and gutter. This is an improved street. It's an improved street that lacks sidewalks. We've run into this scenario on unimproved roadways where a fee in lieu of -- i.e. Old Plank Road, where a fee in lieu of was accepted to waive sidewalks for --

MR. SMITH: Tie-in.

MR. ZENNER: -- tying in sidewalks where -- the bottom of the hill for -- I can't remember the name of the project now. But we -- we've had it for that instance. When we deal with sidewalks that have improvements, in this particular section, which is where we would require sidewalks as part of the general Code. There is nothing that I am seeing here that indicates that the fee in lieu of is an option for the Council. Paragraph B indicates -- and this is how you can get a certificate of occupancy for your construction along a collector or an arterial without installing your sidewalk. It says that you still have to have plans that showed it, but that the property owner has provided a bond, letter of credit or other instrument acceptable to the Director of Public Works guaranteeing construction of the sidewalk within six months of issuance of the certificate of occupancy. Again, it does not relieve -- 24-35 does not relieve -- doesn't grant relief by payment in fee. So when we ask about a payment in fee or the applicant is willing to pay one, there is nothing within our Code -- within the two sections quoted as part of this request that would provide an option for that. And that is, I believe, why Mr. Smith pointed out correctly that we will present to Council what the applicant's proposal is. There is no basis in the written regulation, however,

that indicates that that is part of the authorization, part of a way of waiving responsibility. Now in both, obviously, the tax billing option still exists. So we can always come back and we can always tax bill. Last time we attempted to tax bill property, I -- I think we were advised by our then counsellor, no, we're not going to do that. So it's very rare that we tax bill people for construction of sidewalks. That is why it is part of the capital budget, and when we do our capital budgeting, it's either part of a bond referendum or it's -- we've got money from some grant to do a sidewalk somewhere. That's probably why this shows up in six to ten and the CIP is unfunded because we haven't been able to identify that yet.

MS. RUSSELL: So if we were to make a motion, we could or could not add as part of the motion a recommendation for the City Council to consider a fee in lieu of?

MR. ZENNER: I would say that you are more than welcome to add that as part of your motion for Council's consideration, but it is not a given within the regulatory standards as they are written.

MS. RUSSELL: Okay. Thank you.

MS. LOE: Just a point of clarification to follow up on Ms. Russell's. So in special assessments, that is defined strictly as tax assessments?

MR. ZENNER: The property and -- it reads install sidewalks adjacent to the property and levy special assessments, which would be tax assessment against the property for that purpose.

MS. LOE: Thank you. Mr. MacMann?

MR. MACMANN: Question for Mr. Zenner. We vote unanimously yes or no, this goes on the consent agenda. Right?

MR. ZENNER: Unless you otherwise instruct us, and then we can request that --

MR. MACMANN: We vote it seven to one, they automatically discuss it. Right?

MR. ZENNER: Yes. Seven to -- if it's 75 percent of the Commission voting in favor, an item will - of the members present, it will go on to consent, unless we are asked otherwise. We -- we control placement of an item on the agenda as we produce it or the public does -- public or Council.

MR. MACMANN: I'm just seeing where it's going to end up on -- on the agenda.

MR. ZENNER: If you vote unanimously to approve or to deny, other direction, it would end up on the consent agenda --

MR. MACMANN: Consent agenda.

MR. ZENNER: -- unless you otherwise want Council to have discussion on the item. And that depends on how you frame your motion. We would be -- we're more than happy to indicate when we forward the request to Council for their consideration that it be placed under old business after introduction. This is an ordinance because we are -- it is a request to grant a design modification. Therefore, it requires two readings for it to occur, and that would mean it would be introduced, no discussion, and then second reading, it would be under old business.

MR. MACMANN: Thank you, Mr. Zenner. I just -- just to comment on this for the rest of us here, I understand Mr. Gebhardt's plight. I would like to save the tree too, but it's really dangerous, and we don't have -- I don't think we have the regulatory ability to grant Mr. Gebhardt what he requests. City

Council could do that; legal could do that at the direction of City Council. But I don't think we have that -- we have the ability to make a recommendation, certainly. But I don't think we have the ability to strike a deal, so to speak.

MS. BURNS: Oh, yeah.

MR. MACMANN: We could recommend a deal be reviewed. That's -- I'm -- I just want to make sure it's discussed by Council. That's why I asked that particular question.

MS. LOE: Mr. Stanton?

MR. STANTON: I don't see any legal ground at all to make a deal based on the ordinance or -- so it's kind of off the table for real.

MS. LOE: Ms. Burns?

MS. BURNS: I think we're going to need to move forward with this. I feel the pain having just lost some very significant trees due to a public project, and I have gone through the phases of anger, disbelief. Now I'm in the opportunistic. And so I'm thinking about landscaping options for what you could do here if indeed because I feel like the sidewalk is a greater case. Trust me, I hate the idea of cutting down this tree, but I don't think -- I think we have to look at the greater good of the sidewalk. And as far as consent agendas and things like that, I think we need to focus on this particular project and let the City Council do its job. And if a member wants to pull it off the consent agenda, we'll worry about that at that time.

MS. LOE: Ms. Russell?

MS. RUSSELL: I'd like to make a motion. In the case of 17-157, I move that we deny the design adjustment to Section 29-5.1(d.2.i) and denial of the request to waive Section 24-35 in order to waive the sidewalk requirement for the subject site.

MS. RUSHING: Second.

MS. LOE: Motion by Ms. Russell; second by Ms. Rushing. Any discussion on this motion? Seeing none. Can we get a roll call, please.

MS. BURNS: Yes.

MS. RUSHING: Excuse me. A point of order. She -- the motion was to deny. Correct?

MS. BURNS: The motion is to deny.

MR. STANTON: Deny the variance.

MS. RUSHING: So if you're voting no, you would grant the variance. Okay.

Roll Call Vote (Voting "yes" is to recommend denial.) Voting Yes: Ms. Loe, Mr. Harder, Ms. Rushing, Ms. Russell, Ms. Burns. Voting No: Mr. MacMann, Mr. Stanton, Mr. Toohey. Motion carries 5-3.

MS. BURNS: Four to three, motion -- five to three, motion carries.

MS. LOE: Mr. Smith?

MR. SMITH: And the motion is to deny the variance.

MR. ZENNER: Based on that vote, so we're all clear on this. This goes back to Mr. MacMann's

point. It will be under old business on the Council agenda.