

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
JUNE 6, 2019

VI. SUBDIVISION AND DESIGN ADJUSTMENT REQUESTS

Case Number 82-2019

A request by Crockett Engineering (agent) on behalf of the Seventh Street Properties of Columbia, LLC, and Hulett Descendants, LLC (owners) for a two-lot final minor subdivision to be known as "My Backyard" and design adjustments from Section 29.5.1(c)(7) and Appendix A pertaining to the dedication of right of way (ROW) and corner truncations for alleys and Section 29-5.1(g)(4) pertaining to the dedication of utility easements. Subject property is currently improved with "My House and My House-The Backyard," a bar and entertainment venue. The purpose of the replat is to allow a new structure to be built on the Sixth Street frontage. The site is zoned M-DT (Mixed-Use Downtown) and addressed 119 S. Seventh Street and 120 S. Sixth Street, is located with frontage on both Sixth and Seventh Streets south of the public alley between Cherry and Locust Streets. (This item was tabled at the April 4, 2019, Planning Commission meeting.)

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

Staff report was given by Ms. Rachel Bacon of the Planning and Development Department. Staff recommends:

1. Denial of the requested design adjustments to Section 29.5.1(c)(7) and Appendix A pertaining to the dedication of right of way and corner truncations for alleys.
2. Denial of the requested design adjustment to Section 29-5.1(g)(4) pertaining to the dedication of utility easements, and
3. Denial of the final plat.

Alternatively, if the Commission supports granting one or more of the design adjustments, it may:

1. Make a motion to approve one or more of the requested design adjustments; and
2. Make a motion to approve the final plat subject to correction of any unapproved design adjustments prior to forwarding the item to City Council for consideration.

MS. LOE: Thank you, Ms. Bacon. Before we move on to staff questions, I would like to ask any Commissioner who has had any ex parte prior to this meeting relating to Case 82-2019 to share that with us now so all Commissioners have the same information on behalf of this case. Seeing none. Are there any questions for staff?

MS. RUSHING: I have a procedural question.

MS. LOE: Ms. Rushing?

MS. RUSHING: If we agree that the design adjustments should be denied, can the plat move forward?

MR. ZENNER: The plat should at that point be recommended for denial. It is not capable of being approved as presented since it is noncompliant. The four criteria or the four options that exist within the Code for Planning Commission approval are approval, approval with conditions, denial, or tabling.

MS. RUSHING: Okay.

MR. ZENNER: So our recommendation would be if you find that the design adjustments should not be approved, that you would deny the plat. It is much cleaner that way. The applicant has and is entitled to seek relief at the Council level, so that recommendation would be forwarded. And Council, should they decide to approve the plat, they would also have to override the denial of the design adjustments by a two-thirds majority vote of their body.

MS. RUSHING: So we could have a motion to deny the plat? We would not need to have a motion to deny the design adjustments?

MR. ZENNER: You will need to deny the design adjustments because the design adjustments are what are triggering the public hearing here this evening.

MS. RUSHING: Okay.

MR. ZENNER: So they are separate actions, but they are related. And the staff's position is when the design adjustments in whole are denied, the plat, as presented, cannot be presented forward with a recommendation of approval. It just -- it doesn't -- it's not congruous, it's not possible.

MS. RUSHING: Okay. So if we deny the adjustments, do we need to vote on the plat denial?

MR. ZENNER: Yes.

MS. RUSHING: Okay.

MR. ZENNER: You would need to deny the plat, as well. Formally deny the plat because it is an issue. And the rationale behind that is because the plat incorporates the design adjustments, so both actions have to be voted on separately.

MS. LOE: Mr. MacMann?

MR. MACMANN: That answers -- that answers my question. Thank you.

MS. LOE: To follow up on Ms. Rushing's question, do we need to make a motion for each of the design adjustments?

MR. ZENNER: That would probably be best, depending on how Council would receive your recommendation then. Any denied design adjustment requires a two-thirds majority override by the Council. So if you are going to do a mixed bag on those design adjustments, it would be best to do them independently.

MS. LOE: Thank you. Any additional questions for staff? I see none. We will open up the floor for public comment.

PUBLIC HEARING OPENED

MS. LOE: Please give your name and address for the record. If someone is speaking for a group, you have six minutes to speak. If you're speaking as an individual, you have three minutes to speak.

MR. CROCKETT: Thank you. Madam Chair, members of the Commission, Tim Crockett, Crockett Engineering; offices at 1000 West Nifong, here. Ms. Bacon gave a fairly accurate overview of what is before you tonight, which is a subdivision plat along with three design modifications. It is a final plat of two commercial lots. Originally, the tracts were legal before the UDC came into effect. We've done modifications to the original part -- the original lot that was to the east. We've also done some modification to the lot that's to the west. Both of those were legal prior to the issuance of the UDC. That is the reason why we're here tonight is that we are continuing our project and doing some additional building on the lots and, of course, now we have plat them under the UDC requirement. Again, there is a copy of the final plat. I think the plat is fairly straightforward. I don't think there's any -- much question about that. I think staff would agree to that. I think the issues relies in the design modifications themselves. The first design modification is the alley right-of-way width. That's this section right here, our north property line of the two tracts. Again, if we were forced to grant additional right-of-way, what's currently there is 15 feet. If we're forced to grant two and a half additional feet, that would cause our existing building to be in the right-of-way, as well as the newly constructed amenities that we've constructed on the westerly lot. You can see those amenities or those improvements here. It's hard to tell, but there is a retaining wall on our property. It steps down from the alley down onto our property. We also have fence. We have, you know, posts and we also have an existing building that would lie in the right-of-way itself. That creates a concern. In the staff report, it states, If these three design adjustments are not granted, parts of the existing My House building and existing retaining wall may encroach into the newly dedicated areas of the plat. The applicant may request a right-of-use permit from the City if desired to continue to encroach into the dedicated areas. So, basically, what they're saying is we are -- if we grant the right-of-way, the City may allow us to maintain and keep those facilities in their current location without having to relocate them. But then it says, Should the design adjustments not be granted, the additional right-of-way -- and additional right-of-way dedicated, the applicant will be required to extend the pavement width to the required 16 feet. The right-of-way line is at our existing improvements. Those were built in conformance with the existing regulations at the time. What they're saying is that those improvements can stay in place, but then they turn and say, well, now we have to extend it -- the alleyway by another foot. You can see by the photo on the right that we have a retaining wall, a very tall retaining wall on the other side of the alley. It's very unlikely that a retaining wall will be removed to expand the alley width, so there's contradictions in that design modification right there. We don't know how to -- how to address that. The second one is the corner truncations. These are at these two locations, at this location on either side of the alley that goes out onto Fifth and Sixth Streets. Again, if they are not granted, the building would be in the right-of-way. The City has approved similar such instances on

Walnut and Ninth, Broadway and Hitt, and Fifth Street at Cherry and Locust. That was -- happened to be a City plat. Now those were done in the last two or three years. And as Ms. Bacon says, we want to be fair with everybody. It's -- you know, this is not being consistent. We want consistency. It's a moving target we're trying to hit. The last one is a design modification for the ten-foot utility easement, which is here. That is correct. All subdivision plats must have a ten-foot utility easement adjacent to the right-of-way, and that's typically for nondowntown areas. According to Section 24-4.2(d)(6) of the UDC, and this comes from the architect, we would have to build our building within 24 feet of a setback line. In this case, the setback line is zero feet. So we have to, according to the UDC, our building must be within two feet of our property line. Well, now we can't do that because we have a ten-foot utility easement out there. A similar situation was presented before this Board here not long ago -- I presented it myself -- for the Jefferson Junior Middle School, and where the school itself was going to encroach into the ten-foot utility easement. At the City's request, we granted the easement everywhere we could with the exception of the location in which the building was located. At that point, we went around the building. In this case, they're asking us to put the easement completely opposite. Put the building -- put the easement over the building or under the building. And so again, not very consistent. So in conclusion, the plat conforms to the current standards with exception of the requested design modifications. The two design modifications are similar, if not identical, to others granted in the downtown area. And if you look at the staff reports that were written for those locations; they gave arguments on why they should be given. One of the design modifications wasn't even enforced on the other plats. The other plats that went before that I talked about with the design modifications with regards to corner truncations and right-of-way widths, they weren't required with that to dedicate the ten-foot utility easement. So enforcing the utility easements if required would force the building construction on the site to be out of conformance with the UDC. So we believe that the three design modifications that are presented tonight in accordance with the final plat are consistent with what's been approved in the past, and we ask for your favorable consideration. And with that, I'm happy to answer any questions that you may have.

MS. LOE: Are there any questions for this speaker? I see none. Thank you, Mr. Crockett.

MR. CROCKETT: Thank you.

MS. LOE: Are there any other speakers on this case? Seeing none, we'll close public comment.

PUBLIC HEARING CLOSED

MS. LOE: Commissioner discussion? Mr. MacMann?

MR. MACMANN: I have a -- I have a quick question for the Chair. I'm asking you to help me with my memory. Whilst we were writing the UDC, and maybe some of the rest of guys remember this, we pondered a situation very similar to this as a scenario. How did we move forward; do you recall?

Ms. Burns has a --

MS. BURNS: I recall as far -- I think one of the cases that Mr. Crockett brought up on the -- was Salon Nefisa, on the corner of Tenth and Walnut. And I think because of the area -- you know, I hesitate to even get into this because we're talking about this case here.

MR. MACMANN: Correct.

MS. BURNS: And I think we have focus on the case at hand versus what we've done, and I would refer to our sidewalk discussions which come up frequently. And we continually try to do what's best by the UDC and apply that to new construction in cases that come before us. So I would be happy to share with -- after the meeting, but -- and it might not even be accurate. I'm not sure if it's relevant.

MR. MACMANN: I just was wondering. I thought we hit a sweet spot, because this -- this very issue was brought up. What about redevelopment in these -- Mr. Farnen brought it up, I believe, and I'm just --

MS. BURNS: I think that was a different issue as far as amount of sidewalk and current curvature of that sidewalk at a corner.

MS. LOE: Mr. Crockett, I have a question for you.

MR. CROCKETT: Yes, ma'am.

MS. LOE: Is there a proposed development in -- that this is prompting this --

MR. CROCKETT: Yes. We have -- we have a proposed development that we are in the works of creating. It's been in the process for several years. The Backyard project was constructed here several years ago and now they're going through modifications and adding to that. And so because the new building permits would be needed for additional work, and now the UDC comes into play, that's what creating the need for the platted subdivision.

MS. LOE: What is the new project?

MR. CROCKETT: They are doing a building addition in that backside, yes.

MS. LOE: A new building addition.

MR. CROCKETT: Doing building additions. And so that's -- that's the issue with the utility easement is that we would be denied a permit. And our architect has been told that we would be denied a permit if it wasn't within 24 inches of the property line. Well, now we're being asked to grant a utility easement, so how does that work?

MS. LOE: Ms. Burns?

MS. BURNS: Mr. Crockett?

MR. CROCKETT: Yes, ma'am.

MS. BURNS: I don't know if you have the -- if you're able to put up the picture of the alley that showed the retaining wall and then -- yes.

MR. CROCKETT: Yes, ma'am.

MS. BURNS: Are there -- when I walked this property, there were the trash cans lining the alley.

MR. CROCKETT: Yes. Those have been removed. It's -- there is a trash -- a Solid-Waste concern. Solid Waste has voiced their concerns, and there is an outstanding concern with that. And they made it very clear to us -- Solid Waste has made it very clear to us that that has to be addressed to their liking before any building permit will be obtained for this site. And so when we come in with a new building permit for a new building, a new structure, any type of building construction, we have to address

their -- Solid-Waste concerns for this property. And so lining this alley with dumpsters is not going to be an appropriate situation. They're looking for something else that's going to be located on our property or an arrangement with someone adjacent to our property, but something that's going to be to their liking, and putting them in this alleyway certainly will not be to their liking.

MS. BURNS: Okay. Yeah. Because given that it was a substandard alley currently --

MR. CROCKETT: Correct.

MS. BURNS: -- the trash cans even impacted that more.

MR. CROCKETT: Right. Solid Waste has become much more aware of the situation that's going on down here, and they're -- or they're holding our feet to the fire, if you will, for new building construction as that goes through. In years past, Solid Waste was kind of a -- you know, kind of -- they didn't review the plans, they didn't care, they let it go, and then they wondered why the problem wasn't being solved. Now they have the authority to solve the problem as the building permit process goes forward.

MS. BURNS: Thank you.

MR. ZENNER: Ms. Loe, if you will please open the public hearing up again.

MS. LOE: I understand, yes.

MR. ZENNER: Thank you.

PUBLIC HEARING REOPENED

MS. LOE: And this is Mr. Crockett, and his address is --

MR. CROCKETT: 1000 West Nifong.

MS. LOE: Thank you. Any additional questions for Mr. Crockett?

MR. MACMANN: Do we need to ask for additional speakers, since we reopened?

MS. LOE: Well, Mr. Crockett is at the podium right now. The public comment period is open again.

MR. MACMANN: Thank you.

MS. LOE: I see none. Thank you, Mr. Crockett. Did anyone else have any additional comments before I close the additional public comment period? I see none.

PUBLIC HEARING CLOSED

MS. LOE: Commissioners?

MS. RUSHING: Well, I'll make a comment to get started. I don't believe that the applicant has shown or what the applicant would need to show to grant the requested design adjustments, so I will be voting against them.

MS. LOE: Ms. Burns?

MS. BURNS: I just -- I have concerns about the substandard alley, the solid-waste issues, and the safety concerns for the corner truncation, so I don't plan to support this either.

MS. LOE: Mr. MacMann?

MR. MACMANN: I'm with my fellow Commissioners on the substandard alley and the truncations. And we have problems Alley A and other places because of solid waste and there's just not

enough room. I -- at some point in the future, we may need to discuss easements downtown because I'm trying to get my head around how to make this work going forward. And that's not -- that's not a today thing, it just -- you know, I'm sitting here racking my brain, how do we make that go.

MR. STRODTMAN: Well, I'll -- I'll just throw a little curve. You know, I plan on supporting some of the design adjustments because I think we've got a situation here where there's an existing building that, you know, we're going to have to treat similar to -- we did the Jefferson Middle School, that we had to go around it. I don't see how we give, you know, an easement to the existing building in an area. The retaining wall on that side obviously is not going anywhere, so to get width from that side is not probably going to happen anytime soon, if ever. This alley dead-ends, you know. There's a parking garage on the western end, so the alley -- it doesn't dead-end in the sense of it, you know, but it hits the street, and you have to right or left. The alley does not continue across. So, you know, the other direction, the alleys do go quite a ways east, and so, I don't know. I mean, this alley is usable, it's serviceable. It's not going to be an Alley A, but, you know, I don't think we expect all of the alleys to be an Alley A either. So I'm not going to say that I'm going to support all three of the adjustments, but I think we have to consider something.

MS. LOE: Mr. Stanton?

MR. STANTON: Yeah. I'm kind of straddling the fence on the issue because I guess I'm looking for win-win, and I can't see how either side is trying to make it happen. I mean, we've got some permanent structure issues and we've got a business that's trying to grow. I think something can be worked out, but I don't see it yet. Maybe I can -- maybe somebody can help me come up with a win-win. I like the idea of the development, but we have solid-waste issues and, you know. You got to make both sides happy, so I'm open for any help to get this through.

MR. STRODTMAN: I think the solid waste will be addressed. You know, I think -- you know, our speaker was correct that we've learned a lot since the student-housing boom, and solid waste has become a much bigger issue for us in downtown, so that's something that I do think that's it's on their radar and it has to be addressed and it will be addressed, and I think that's outside of our purview as long as we know it's being addressed by that department. That's just my own personal --

MS. LOE: Ms. Bacon, I have a question. So Mr. Strodtman brings up the issue that we seem to be applying the restrictions to an existing building in this case, and that's because the plat is being combined. And so the one plot is getting the addition, so we're looking at restrictions that would be applied to a new building, but then they're being carried over to the existing.

MS. BACON: Yes. The corner truncation and the additional right-of-way dedication would affect both an existing building and the newly built building.

MS. LOE: Because I think I agree that the restrictions should be applied to the new construction, but I agree it seems to be setting up a bit of a dichotomy with the -- I mean, I understand that they would apply for legal nonconformity --

MR. ZENNER: It's not the fact that you have a building -- an existing building in a nonimproved or non - a lot that does not have a permanent structure on it. It is the fact that you are actually combining the parcels through a subdivision action as a result of the UDC. We will not allow you to build over a property line under the UDC.

MS. LOE: Uh-huh.

MR. ZENNER: The permitting associated with all of the improvements on the back lot were done prior to the adoption of the UDC. So -- and there is a separate arrangement relating to the ownership of this property that allowed for crossover and passage between the lots while the standards that previously existed permitted the construction over a property line. When the UDC was adopted, those provisions were removed, and now we're looking at an expansion and a new construction on a lot that is desired to be consolidated, and that is what's triggering this. The mere fact that the building exists and would be nonconformed is no different in -- that in other instances and where we have taken easements that are forward looking based upon the potential that a building is catastrophically destroyed, removed at the request or the desire of the owner, and we have the ability then to make the improvements to the public infrastructure that would have otherwise been required. Tiger Tots off of Paris Road is good example of a subdivision plat that was brought in, that we have an existing daycare center building that has an easement going through it and has a truncation at the corner of one of its streets that it is on the corner of, and that is all forward thinking. So to the extent that the applicant has asked for design adjustments, the design adjustments have to be viewed from the perspective of you have M-DT design requirements that, as Mr. Crockett has accurately pointed out, specify a required building line construction standard. That is in the M-DT standards, and we're -- we're straddling two different sets of provisions here, one that's subdivision and the parcel has to comply with the subdivision standards; therefore, you're getting these subdivision design adjustments. And you have to weigh, and from a staff perspective, I believe the -- the request before the Commission is to weigh those subdivision waivers against the design requirements of the M-DT district. And it is correct, a ten-foot utility easement is going to be regulatorily required to be occupied by eight feet of building under the M-DT. The scenario here is is, if I'm not correct in speaking, can -- and correct me on this. The utilities, as they exist today, exist within the public road right-of-way. Again, we're looking forward. But the Commission, in weighing, I think its decision on approving or denying a design adjustment, for example, for the utility easement, needs to take into consideration what is more important, the design aspects of the UDC and the M-DT standards of creating a continuous and a unified active street frontage, or securing a utility easement that may never be used in the future because all of the utilities currently are located under public right-of-way. As far as for road right-of-way and corner truncations, those are definitely driven by subdivision actions and they are considered essential as it relates to the functionality of this parcel with an enhanced development on it. And if it should go away, the downtown still is going to have an infrastructure need, and if we don't, as Ms. Bacon pointed out, acquire those or secure them for usage at some point in the future, we lose the opportunity to do so without having to probably either pay a premium to get them back or we just have to

give up possible expansion. Now I will say this much, we are unaware of any CIP capital projects to expand the alley. And for a practical perspective, the Commission may find the fact that there is an elevation change in the alley, there is a retaining wall to the north, that it is impractical to consider -- and a building sitting on the east end of this alley, that it will ever be widened. However, weigh that against the fact that we do have a need for trash collection and adequate space for the movement of our trash vehicles to pick up the waste that is generated from this site. That may warrant the necessity for an increased alley right-of-way in an area that is not occupied by a building, which would be no different than what we would require for any other newly developed site. So it's -- and it is not something that is regulated against in the M-DT. You have to plat a compliant lot to get the building permit, and if the building -- if the plat requires the rights-of-way, we have to determine is that right-of-way warranted based on those conditions of the proposed construction.

MS. LOE: Thank you, Mr. Zenner. Ms. Rushing?

MS. RUSHING: So to -- to clarify, if we require the truncation and the width, if we support those requirements and deny the application to have those changed, that will not affect the existing building. They won't have to do anything to the existing building as a result of that action?

MR. ZENNER: As Ms. Bacon pointed out within the staff report, it is -- because it would be encroachment in a dedicated area for future public use, a right-of-use permit process would need to be engaged -- they'd have to go through a right-of-use permit. We do not have any -- any -- any aspect at this point, so the -- the building would not be required to be torn down. There is no guarantee, however, that at some point in the future, that we may desire to utilize that easement area that this plat has dedicated and have to do one of two things. Either work with the property owner in order to modify the building in order to open up that easement area that we have been granted or relocate a project in order to avoid that to not disrupt the business operations of that owner. I think to the point that Mr. Strodman was making, as we handled with Jeff Junior, the easement could potentially be granted or the right-of-way could potentially be granted in an area that is not impacted by maybe the physical building, such as what we did at Jeff Junior. Again, though, you have an elevation change in the alley and that is significant as it relates to widening of the alley and the potential improvements that that may entail. An easement, in my mind, if it doesn't encumber and doesn't encumber the building, that may be a possibility, as well. And again, if you deny those easements or those requests, Council and the applicant -- the applicant can make the appeal to Council and Council ultimately would have that final decision. I can't guarantee you that there won't be a need for those easements at some point, but the right-of-use permit would grant the applicant the opportunity to occupy them in the interim period of time that the City needed them, and then, if we do need them, they could potentially be utilized.

MS. RUSHING: And my second question is, are you saying that the utility easement may not be needed?

MR. ZENNER: I would conclude to you that given what we have seen in the downtown in the past, that is correct. All of these utilities do lie within the public right-of-way today of Tenth -- or of Sixth,

and that easement could be waived by the Planning and Zoning Commission. Our subdivision code does not afford the staff to make that decision administratively. It is very clear that all newly platted property must provide a ten-foot utility easement along all rights-of-way. So what the staff report has articulated is a clear presentation based upon what our obligations are per the Code. The Commission, given those unique conditions, however, of utilities already in the right-of-way, the UDC requiring and the M-DT to be within 24 inches of the property line, those may be factors that you consider as supporting the request of the applicant to waive it. We are not in a position to not apply our Code, and what Ms. Bacon's report has done has done just that. We have applied our Code as it is written. If we had the ability to use discretion to say that, well, this is just impractical, not needed, we would probably have done that. If we had looked at an opportunity to where we were saying, well, we could maybe negotiate like we did at Jeff Junior, we would do that, as well. There is no physical structure on the Sixth Street frontage at this point. Hence, the reason for the recommendation that there does not appear to be a hardship to us to provide it. Unfortunately, we overlooked the two-foot requirement to be within the property line as part of the -- as part of the M-DT standards, and we apologize for that omission. But, otherwise, there is no building there that impedes the ability to provide the ten-foot easement.

MS. LOE: Any additional questions, Ms. Rushing? No? I have a follow-up question for Ms. Bacon. On the right-of-way -- or for the alley width, it was commented that should the -- there's a sentence in the report, Should this design adjustment not be granted, and the additional right-of-way dedicated, the applicant will be required to extend the pavement width to the required 16 feet. Does that apply both at the lot and at the existing building where it is 15 feet now, I believe?

MS. BACON: Well, as I've been sitting here thinking about that, I think it might be a may. The pavement width section is 16 feet in the Code. It's pretty clear. But it might be that there would be a half-width of the substandard, which would be a half of a foot potentially, but it might also be a situation where that right-of-use permit could buy some time on the pavement width extension. But, yes. If you -- if the right-of-way is required to be dedicated, that means that width -- in that same section, it deals with the pavement width. The pavement width is also substandard. So those two are coupled together and it would run in the same line with the net right-of-way.

MS. LOE: Right. But we have an existing building in a 15-foot alley and you're --

MR. ZENNER: Considered another way, I believe so.

MS. LOE: Yes.

MR. ZENNER: Where the building is not located --

MS. LOE: Yes.

MR. ZENNER: -- and the right-of-way is dedicated --

MS. LOE: Yes.

MR. ZENNER: -- Ms. Bacon was trying to get across is the pavement would need to be made. The pavement improvement would be made up to the building, which again --

MS. LOE: All right.

MR. ZENNER: -- you all have to make a decision as to the practicality associated with that.

MS. BACON: (Inaudible) -- pavement under --

MR. CROCKETT: But the building is on the property line.

MR. ZENNER: Well, I'm -- but I think to --

MS. BACON: We could open the public hearing again.

MR. ZENNER: But I think what we -- I think what we would end up with -- what you would end up with is the right-of-use permit would need --

MS. BACON: Yeah.

MR. ZENNER: -- you need to grant a right-of-use permit for the area of the building's encroachment in the right-of-way that was platted, but could not be improved due to the building's existence, and then the improved portion would be everything to the west of where the building is.

MR. CROCKETT: (Inaudible)

MS. LOE: Mr. Crockett, we're not in public comment period.

MR. ZENNER: So, I mean -- and so, again, part of what one has to look at is this balancing practical application against regulatory mandate. That's why you all are paid the big bucks.

MS. LOE: Mr. Toohey, and then Mr. MacMann.

MR. TOOHEY: So I've got a -- my question was for staff. So the University owns the building to the south of this. So let's say we didn't approve any of this and they came back and designed it to the specs of the UDO, and then the University bought this building and decided to knock it all down, they could then go do whatever they wanted regardless of what we -- what the applicant would have changed to get this to be supported by staff. Correct?

MR. ZENNER: The University is exempt from our zoning requirements for University-owned property. We -- we just do not have a choice in that respect.

MR. TOOHEY: Okay. Just wanted to clarify.

MS. LOE: Mr. MacMann?

MR. MACMANN: I'd like to call the question, just so we can get through these points one at a time, unless you guys really do want to deeply discuss some of these other issues. I'd like to make a motion. In the matter of the design adjustments in Case 82-2019, beginning with number one, the substandard nonconforming width or potentially nonconforming width of the alleyway, moving in the positive, I move that we approve that design adjustment, though I will be voting the other way.

MR. TOOHEY: Second.

MS. LOE: Second by Mr. Toohey. We have a motion on the floor. Any discussion on this motion? I see none. Ms. Burns, may we have a roll call, please.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Rushing, Mr. Toohey, Mr. Strodman. Voting No: Ms. Burns, Ms. Carroll, Ms. Loe, Mr. MacMann, Mr. Stanton. Motion fails 3 to 5.

MS. BURNS: Three to four, motion does not carry.

MR. ZENNER: Three to five.

MS. BURNS: Three to five.

MS. LOE: Mr. MacMann?

MR. MACMANN: I have a motion. In the matter of Case 82-2019, the corner truncations on this property, I move that we approve them.

MS. LOE: We have -- do we have a second?

MR. TOOHEY: I'll second.

MS. LOE: Mr. Toohey is the second. We have a motion on the floor. Any discussion? This is on the truncations.

MR. MACMANN: I -- I just want to make a comment before I go much further. I'm -- I appreciate Mr. Crockett's issues and I truly appreciate staff issues and the City issues. This is an unresolved issue and a solution gives Mr. Crockett's customers a piece of property that we could tear down at any time, and I'm not really comfortable with that. I -- to let you know. A right-of-use permit till we might need it in the future. So I'll be voting no.

MS. LOE: Any additional comments? Mr. Stanton?

MR. STANTON: So the motion on the floor is to approve?

MR. MACMANN: It's a positive motion. I'm making all these as positive.

MS. RUSHING: To approve the requested design adjustment?

MR. MACMANN: Correct.

MS. RUSHING: And that was for the first one, also, to make sure that --

MS. LOE: This is for corner truncations only.

MR. MACMANN: This for corner -- we've addressed the substandard alley. This is to address the corner truncations. I move to approve those.

MS. RUSHING: The corner truncations?

MR. MACMANN: The corner truncations, because all motions need to be positive, the affirmative.

MS. RUSHING: I'm -- let me clarify. When you moved to approve the dedication of right-of-way, was that to approve the requested design adjustment or to approve the requirement that right-of-way be dedicated?

MR. MACMANN: To clarify, this was my intent. To go through the design adjustments one at a time, number one, the alleyway.

MS. RUSHING: Okay. But you're not answering my question.

MR. MACMANN: Okay. Perhaps I'm not understanding it.

MS. RUSHING: You moved to approve -- to approve the design adjustment, which, to me, was to approve the requirement that they dedicate right-of-way.

MR. MACMANN: In the alleyway, yes.

MS. RUSHING: In the alleyway.

MR. MACMANN: Yes.

MS. RUSHING: Okay. And so you're motion now, is that to approve the requirement of corner truncations?

MR. MACMANN: The other way.

MR. ZENNER: Ms. Rushing, Mr. MacMann, if I may?

MR. MACMANN: Yes, sir.

MR. ZENNER: The design adjustments are to waive the requirements. So Mr. MacMann's motion in the affirmative was to approve the design adjustment to waive dedication.

MS. RUSHING: That's what I understood.

MR. ZENNER: So your vote of no was a vote to not support approval of the design adjustment. If you voted yes, you were supporting the design adjustment.

MS. RUSHING: Okay. And I voted --

MR. ZENNER: No.

MS. RUSHING: Yeah. Okay.

MS. BURNS: No. She voted --

MR. ZENNER: Or you voted yes, just to get this correct.

MS. RUSHING: So on this, it's the same thing. Okay.

MR. MACMANN: Ms. Rushing, you've completely confused me.

MS. LOE: We have a motion on the floor. The motion is to approve the corner -- the request to waive corner truncations. Any further discussion? I see none. Ms. Burns, may we have a roll call, please.

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Strodman.

MS. RUSHING: We're approving --

MR. ZENNER: The request to waive.

MS. RUSHING: We're approving the requested design adjustment?

MR. ZENNER: Yes. The request to waive the truncation dedication.

MS. RUSHING: Then no.

Roll Call (Continued) Voting Yes: Mr. Strodman, Mr. Toohey. Voting No: Ms. Rushing, Ms. Burns, Ms. Carroll, Ms. Loe, Mr. MacMann, Mr. Stanton. Motion fails 2-6.

MS. BURNS: Six to two, motion is denied.

MR. ZENNER: Six.

MS. LOE: Thank you.

MR. MACMANN: Madam Chair, I have a motion.

MS. LOE: Yes, Mr. MacMann?

MR. MACMANN: In the matter of Case 82-2019, the dedication -- to approve the dedication of the easement on Sixth and Seventh, I move that do, moving in the affirmative. I move to approve the design adjustment for the expansion of the easements.

MS. LOE: Okay. This is the utility easement?

MR. MACMANN: Yes, ma'am. On Sixth and Seventh.

MS. LOE: Do we have a second?

MR. STRODTMAN: Yes.

MS. LOE: Mr. Strodtman is the second. We have a motion on the floor. This is for approval of the waiver request for the -- providing the ten-foot utility easement. Any discussion? Seeing none.

Ms. Burns, may we have a roll call, please.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Strodtman, Ms. Rushing, Mr. Toohey, Ms. Loe. Voting NO: Ms. Burns, Ms. Carroll, Mr. MacMann. Motion tied 4-4.

MS. BURNS: Four to four, motion ties.

MR. ZENNER: Mr. Stanton.

MS. BURNS: Mr. Stanton. Sorry.

MR. STANTON: No.

MS. BURNS: I need a counter.

MR. ZENNER: That is a tied vote now, four-four. No recommendation being forwarded.

MS. BURNS: Thank you.

MR. MACMANN: Madam Chair, I have a motion.

MS. LOE: Mr. MacMann?

MR. MACMANN: In the matter of Case 82-2019, I move that we approve the final plat.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton. Any discussion on the motion on the floor?

MR. MACMANN: Madam Chair, I will be voting no, as I -- as I said before, I don't want to give Mr. Crockett's customers pieces of property that we could take away from them. The right-of-use permit bothers me a lot.

MS. LOE: Mr. Zenner, point of order. Can we -- can we approve it if we've denied two of the motions?

MR. MACMANN: The -- the final plat would have to be complete redone if we approve it.

MS. RUSHING: No. And we can't approve it because --

(Multiple people talking simultaneously.)

MR. ZENNER: Yeah. So it's not --

MR. CALDERA: So right now, the plat that Mr. Crockett has submitted includes the design adjustments. You all have voted down two of the design adjustments. Therefore, his plat is not in conformance with what you all -- are basically stating.

MR. STANTON: So it's nonconforming.

MS. LOE: But can we actually approve it?

MR. MACMANN: May I clarify my motion? If I may, because of what we've done and what we are doing, Mr. Crockett's plat is moot. It's not correct. Nothing works. The numbers are all off. It would have to be completely replatted. I'm moving to deny it because it's not functional, it's not practical, it's not doable.

MS. RUSHING: Second.

MS. LOE: We had a motion on the floor.

MS. RUSHING: He needs to withdraw it.

MR. MACMANN: I was just -- I was explaining it. That's all I was doing. But thank you for the support.

MR. ZENNER: A vote -- a vote of yes would be to support a noncompliant plat. A vote of no would be to deny the plat because of its noncompliance, because the motion was made in the affirmative.

MS. RUSHING: We're going with your first motion.

MS. LOE: We're going with the motion on the floor?

MR. ZENNER: Yes. That is the motion on the floor. And if the motion fails on the floor, to answer the question again as I stated earlier, the Commission has four potential options: Approval, approval with conditions, denial, and table. If this motion fails, you have the ability to make a motion to approve a plat with conditions. And if those conditions would be correction to address the design adjustments, or to create a compliant plat, that would be your motion.

MS. RUSHING: So we need to vote on this?

MR. ZENNER: But right now -- right now, your motion that is on the table is a motion to approve the plat without any conditions. A vote of yes would be to approve the plat, a vote of no would be to deny it.

MS. LOE: Thank you, Mr. Zenner. We can vote on it or we could amend the motion.

MR. MACMANN: I -- I -- if I may, before we do vote. I would just like to say let's vote on this plat as it is, and then if we want to discuss what else is going to go on, we do that.

MS. LOE: Okay. Any further discussion on this motion? Seeing none. Ms. Burns, may we have a roll call, please.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Strodman, Mr. Toohey. Voting No: Ms. Rushing, Ms. Burns, Ms. Carroll, Ms. Loe, Mr. MacMann, Mr. Stanton. Motion fails 2-6.

MS. BURNS: Two to six, motion is denied.

MR. ZENNER: Denied.

MS. LOE: Recommendation for denial --

MR. ZENNER: The motion has been --

MS. LOE: The motion has been denied.

MR. ZENNER: Motion is denied. There was no tie. It didn't fail to get -- it got a second, it's been voted on. Motion was to deny. So a motion will be forwarded to Council for denial of the plat, denial of two of the design adjustments, and a no recommendation on the third.

MS. LOE: I believe this concludes Case 82-2019.