

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
MAY 5, 2022

Case Number 139-2022

A request by Ashley and Patrick Scholl (owners) for a design adjustment from Section 29-5.1 of the UDC in regards to construction of sidewalks along their property's Old Plank Road frontage. The 2.81-acre property is located on the north side of Old Plank Road, east of Abbotsbury Lane, and addressed as 7101 S. Old Plank Road.

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

Staff Report was given by Mr. Rusty Palmer of the Planning and Development Department. Staff recommends denial of the requested design adjustment from Section 29-5.1(d).

MS. LOE: Thank you, Mr. Palmer. Before we move on to questions of staff, I would like to ask any Commissioner who has had any ex parte related to this case prior to this meeting to please share that with the Commission so all Commissioners have the benefit of the same information on the case in front of us. Seeing none. Are there any questions for staff? Commissioner Placier?

MS. PLACIER: Yes. Thank you for -- well, two questions. One is -- was -- did the tree really have to go.

MR. PALMER: So it is -- it does lie directly in the path of the standard sidewalk location. It is -- I believe it's two to three feet off of the property line, and if we build a five-foot sidewalk, a foot off of the property line, it's -- it's right -- right there. So in a standard location, yes. It would go right where the tree is. But again, we do accept nonstandard sidewalks that, again, would have to be placed in an -- in an easement probably if it's on private property, but it can be done, and it's been done in numerous locations.

MS. PLACIER: I also appreciated the photo that showed where this lot sits in relation to the other two on Barcus -- or whatever it was called, the Barcus Subdivision or something, and that there's just the one middle one that does not have sidewalk at this point. But that -- or does it?

MR. PALMER: Well, so this map actually kind of depicts it. So the subject lot is here in the red. This lot here is undeveloped and has no sidewalks. And then this kind of sliver here extends around the corner. That is where that nontraditional sidewalk example exists. And then -- and then just to be, you know, fully transparent, these lots here are also undeveloped. This is another residential lot, and then also this is a -- a planned office lot or a planned district lot that are both undeveloped and do not have sidewalks.

MS. PLACIER: Yes. I thought the sidewalk there on the west was pretty creative in the way that it -- it was done. And if a sidewalk on the subject property could be created, that would then continue over to that. I was concerned about connectivity. It doesn't look like there's going to be any to the -- the northeast for quite a while. So because we do hear about sidewalks to nowhere, but if that middle lot eventually would have a sidewalk, there could be some connectivity in that direction.

MS. LOE: Commissioner Burns?

MS. BURNS: Thank you. Mr. Palmer, just to drill down a little bit, we could -- so what you're saying is there could be creativity in trying to protect the heritage tree?

MR. PALMER: Yeah, absolutely.

MS. BURNS: Okay. So we could consider that when we're looking at requiring a sidewalk, that if the applicant would be agreeable, you could go around the tree in a variety of ways -- or maybe not a variety, but --

MR. PALMER: Yeah. You guys are considering whether or not the sidewalk needs to be built, and then beyond that, it's a consideration by our building and site staff to work out an agreeable conclusion.

MS. BURNS: That helps me tremendously. Thank you.

MR. PALMER: Uh-huh.

MS. LOWE: Commissioner MacMann?

MR. MACMANN: Thank you very much. I'm going to go back to the beginning a little bit. This was platted in 2015. They had a -- there was a three-year performance contract, which was not fulfilled; is that correct?

MR. PALMER: Correct. Yeah.

MR. MACMANN: This getting Tory Pines-ish on me. When this property was transferred to the new owners, were all deeds and covenants transferred? Were they aware of this? Was this a surprise to them?

MR. PALMER: I can't speak for them. I believe they're present. They may be able to speak on that. But the -- well, I'll just leave it at that. I'm kind of not well versed enough to explain it.

MR. MACMANN: Typically, all -- all that information is transferred?

MR. PALMER: Yes. Yeah.

MR. MACMANN: And I will -- I will gladly ask them, if they choose to come speak to us. I'm just -- I'm loathe -- we have, in the past, and that's why I made the previous example, summoned and executed performance contract, and then years later ask us for relief. Given that we're a long 1.5 mile walk and a short .2-mile walk, I think it's very necessary to have sidewalks here, particularly given the pace with which this is developed. And I'd like to address the point of the sidewalk that we allowed not to be built. That's street has far less traffic, far slower traffic than what this does.

MR. PALMER: Right.

MR. MACMANN: And that area is already all built out as opposed to this one which is, you know,

just starting to take off.

MR. PALMER: I will say on the transfer the performance contract was an old form that we've actually changed because of issues like this. It had a no-transfer clause, so the original owner was always responsible for what that performance contract agreed to. The statement I made in the presentation, though, about how, you know, it is required within three years, but typically, we don't -- we don't pursue that. What we do is we make sure that as those houses are built, we get the sidewalk piece by piece, and sometimes that takes decades, but --

MR. MACMANN: But -- and this would be another piece in my view of that.

MR. PALMER: Right. Right. But what I'm getting at is just that I think, to answer your question about transferability --

MR. MACMANN: Uh-huh.

MR. PALMER: -- it wasn't able to be transferred to a new property owner. But the way that the City manages those means that, you know, the owner now is the one that's going to have to be responsible for it.

MR. MACMANN: I just want to -- if that is truly an issue, if they don't know, we really, really, really needed to fix that. The UDC says that, and this may be another issue. But thank you for your responses. Madam Chair?

MS. LOE: Additional questions? Commissioner Rushing?

MS. RUSHING: Well, I think this is basically what you already asked, whether staff knows when the property owner became aware that they were required to build a sidewalk. You don't -- did you indicate you do not know?

MR. PALMER: Well, no. They just -- you know, when they requested the waiver, I mean, obviously, they were aware at that point.

MS. RUSHING: But you don't know how much longer -- how much further back?

MR. ZENNER: I think, Ms. Rushing, as I understand it, this topic came to us when the applicant requested to get a final CO to occupy their house.

MS. RUSHING: Okay.

MR. ZENNER: As Mr. Palmer was explaining, the practice of sidewalk installation on residential property has historically been assigned to the individual residential lot. And so when a builder comes to pull a building permit, as a part of finishing out that permit, they are required, not the developer that sold the lot to them, to put in that sidewalk as part of their final occupancy permit standards.

MS. RUSHING: Okay.

MR. ZENNER: And so this particular property, and I don't know if Mr. Palmer covered this. This particular property also unfortunately had an issue with its construction going over a utility easement. And we had to vacate a utility easement and relocate it in order to be able to get the house to even be occupiable, and I believe it was occupied under a temporary occupancy permit, and I think that's what it is currently, and then the sidewalk issue came on top of that. So it's been an unfortunate set of

circumstances for these property owners that they've encountered some issues given -- given the lot, given the placement of the house, and some of our requirements that they may not have necessarily been fully aware of. But sidewalk -- the issue at hand, this is not unique. Sidewalks are installed by homeowners and by their builder for their individual lot. Our Code makes very clear now and did before we adopted the UDC that sidewalk along common lots within a residential development is required to be installed by the developer before we will accept public streets. So what you see in some developments, residential especially, is you have spotty sidewalk construction where common lots may exist, and that's so the developer can turn the streets over to us to maintain, but then each individual homeowner builds those adjoining sidewalks as those houses are constructed. And in commercial development, the former performance contract really never was an issue because you had one master developer developing the entire commercial property. We made the changes to the performance contract for an automatic transfer clause upon sale to address this exact issue now, and that would apply then to all residential property owners. And to Mr. MacMann's point, as a part of the property sale, the owner in -- of receiving their documents with that land should be made aware that there's a performance contract for installation of outstanding public improvements, which the sidewalk would be considered one.

MS. LOE: Any additional questions for staff? If there are none, we'll open up the floor for public comment -- public hearing -- excuse me.

PUBLIC HEARING OPENED

MS. LOE: If anyone has any comments that they would like to present, please come up to the podium. We need your name and address for the record. If there are none, we will close public hearing.

PUBLIC HEARING CLOSED

MS. LOE: Commission comment? Commissioner MacMann?

MR. MACMANN: I will be making a motion shortly, if that's okay. I think this is an area that is developing and building out quickly. It's not the old southwest area where that's all developed and this is the only lot. That street is also much less traveled and much slower traffic in this area still developing. Also, it's very close to public amenities, and a sidewalk might actually help safety in that corner, but I'm not a traffic engineer. So I will be voting -- I will be making a motion and voting to deny their request for the design adjustment.

MS. LOE: Commissioner Rushing?

MS. RUSHING: And I agree. This Old Plank Road just cries out for sidewalks, I think. The traffic along there and this kind of the -- I don't know -- want to say the recreational feel of the area that I think sidewalks would be widely used.

MS. LOE: I would just like to comment that the motion should be made in the affirmative.

MR. MACMANN: Correct. Thank you.

MS. LOE: Thank you. Commissioner MacMann?

MR. MACMANN: If my fellow Commissioners have no other questions or comments, I would like to make a motion. In the matter of Case 139-2020 [sic] I move to approve -- what?

MS. LOE: 2022.

MR. MACMANN: Thank you. I state again. In the matter of Case 139-2022, I move to approve the requested design adjustment.

MS. RUSHING: Second.

MS. LOE: We have a motion on the floor moved by Commissioner MacMann, seconded by Commissioner Rushing. Any discussion on this motion? Seeing none. Commissioner Carroll, may we have roll call, please.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Stanton. Voting No: Ms. Carroll, Ms. Loe, Ms. Burns, Ms. Rushing, Mr. MacMann, Ms. Placier. Motion fails 6-1.

MS. CARROLL: We have six no votes and one yes. The motion is defeated.

MS. LOE: That recommendation will be forwarded to City Council.