

EXCERPTS

PLANNING AND ZONING COMMISSION MEETING

OCTOBER 4, 2018

Case No. 18-181

A request by Victory Christian Church of Columbia, Inc. (owner) for approval of a design adjustment to Section 29-5.1(d)(2) to allow the waiver of sidewalk construction along the property's Ballenger Lane street frontage, a distance of approximately 1,500 feet. The 13.42-acre subject site is located on the west side of Ballenger Lane, approximately 1,200 feet north of Clark Lane and addressed as 1705 N. Ballenger Lane.

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

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff is recommending the public hearing be opened in this matter to get feedback from applicant and anyone else in the neighborhood that might be affected.

MS. LOE: Thank you, Mr. Smith. Before we ask staff questions, ex parte, I would like to ask any Commissioner if they've had any ex parte prior to this meeting related to Case 18-181 to please disclose that now so all Commissioners may have the same information before them. Seeing none. Were there any questions of staff? Mr. MacMann?

MR. MACMANN: Just -- I'll save that. Thank you. We'll get to it in a minute in our discussion. Thank you.

MS. LOE: Okay. One saved question. Ms. Rushing?

MS. RUSHING: If they install this sidewalk, it will be in a location where it would survive street widening; is that correct?

MR. SMITH: That would be the goal. So we do have an unimproved street sidewalk standard and that does have a design specification there that should allow a sidewalk to be placed at a certain elevation so it can be retained in case a roadway project -- a road-widening project is implemented in an area, but it is somewhat of an estimate. Unless we had a specific street designed profile for that street, we don't know exactly at what elevation it should be built at. So it gives us a pretty good estimate.

In this case, talking with Public Works, in general, if we can go back here, you can see the sidewalk -- the property line is pretty close to the electric lines, I believe, and I think the design of the site was such that the sidewalk would actually probably be built a little bit on the site. Again, I think that was on the site plan, so that's not definitive. But there is area there that probably would remove it enough from possible roadway construction in the future, but I can't guarantee it, per se.

MS. RUSHING: But if it had to be moved, that would be at the City's cost?

MR. SMITH: Yes. If the City initiated a street project out there and they had to remove the sidewalk, they would -- they would replace it. And just for a point of clarity, that project is not on -- in the CIP currently, not in the ten-year plus plan, either one, so --

MS. RUSHING: Okay.

MS. LOE: Mr. MacMann?

MR. MACMANN: I would like to revisit a couple of those issues. I'm not asking you to explain what I'm about to say, I'm just going to do it as -- make a statement of compare and contrast. This is about the fee in lieu of, and I will get to a question here in just a minute. The \$61 a foot is a great price. My street, Hubbell, the price we got from the City for a sidewalk was \$452 a linear foot, just FYI. Am I correct, Mr. Smith, that this whole area has been requesting sidewalks, the northeast, so to speak, for quite some time, but it's just never made the CIP cut; is that a fair assessment of how these things have gone on Clark and Ballenger and this general area?

MR. SMITH: I don't think I have specific knowledge of any requests specifically from residents for sidewalk out there, but I do understand that this is a project the City identified because there is a lack of general -- any pedestrian opportunities or locations for pedestrians to walk along Ballenger and it is a fairly well traveled roadway, so -- but I'm not -- I'm not aware of any specific requests.

MR. MACMANN: I just -- the Councilperson Skala has attempted for several years to get sidewalks and now he's got Clark -- he's got the space on the side of the road there. Okay. I'm just -- I wanted to bring that up so that was in the record, so this is an area in need, so to speak.

MS. LOE: Any other questions?

MS. RUSSELL: I have one.

MS. LOE: Ms. Russell?

MS. RUSSELL: If, in the future, the City were to decide to put sidewalks in there, would you be able to tax bill them?

MR. SMITH: The City has that -- I don't want to go too far out on a limb. I believe they have that legal ability, but I am fairly sure that has not been exercised in any instances that I can remember.

MS. RUSSELL: Okay. Thank you.

MS. LOE: Mr. Smith, I -- just for clarification. I thought these requests usually came to us at the front end of projects. I was just curious as to why this one appears to be coming to us at the back end of the project?

MR. SMITH: Sure. Usually, they'll come at the front of the project when they're associated with a plat because the plat sometimes is the trigger and they -- they know when they plat the property that sidewalks do come along with that, so they'll ask for the waiver at that point. This had been previously platted or is a legal lot currently, and so the trigger there is basically any new construction along a major roadway still requires sidewalks regardless of whether you're platting or not, so --

MS. LOE: But the new construction is completed?

MR. SMITH: The new construction is completed, and they're allowed to construct the building, but they will not get a final certificate of occupancy until this matter is resolved.

MS. LOE: But they chose to construct the driveway without resolving this matter?

MR. SMITH: That's correct.

MS. LOE: Okay. Thank you. All right. We are going to open up the floor to public comment, so

if anyone would like to come forward and comment on this case, they're free to do so. Please provide us with your name and address for the record.

MR. PUTNAM: Okay. Good evening, everybody. My name is Mark Putnam; I live at 4807 Silver Cliff Drive here in Columbia. I'm the pastor of Victory Christian Church of Columbia. I've also been a resident of Columbia since August of 1973, so I'm not a fly-by-night get through this thing. I'm here on behalf of Victory Christian Church to request a sidewalk construction waiver for our property located at 1705 Ballenger Lane. We are asking the City of Columbia to grant us a sidewalk construction waiver because the City of Columbia, along with MoDOT, is constructing 1.3 miles of pedestrian pathways on both sides of Ballenger Lane from Clark Lane to the south to Mexico Gravel Road in the north. The City's Planning Department has said that this pedestrian pathway will provide a minimum level of service for pedestrians. Because this pathway will meet the needs of pedestrians, we believe it is unnecessary for the church to construct an additional sidewalk. Now Tim Teddy, the Director of Community Development, who is here, I've told him I was going to quote him, and he's free to correct me if I say something wrong. We had a discussion, but he's told us that the current sidewalk requirements were meant to be applied to new subdivision developments with a connected sidewalk network that could be built and with improved roads. Ballenger Lane is an unimproved road with old neighborhoods, with no sidewalks. In fact, there isn't any connected sidewalk networks on Ballenger Lane but 1.3 miles from Clark Lane to Mexico Gravel Road. Because the City is constructing pedestrian pathways the entire length of Ballenger Lane, we feel that they don't really expect to build any sidewalks anytime in the near future or the distant future. We believe a waiver should be granted to the church so we aren't forced to build a sidewalk as we call to nowhere, and that phrase came from the City Community Development who comes to inspect our building. They joke about the sidewalk to nowhere. And because the City is willing to accept a payment from the church of \$91,365 for a fee in lieu of sidewalk construction, we believe that a sidewalk is not really needed. And because no public safety, health, schools, parks, playgrounds, or any other public facilities would be adversely affected by not having a sidewalk in front of the church, we believe a waiver should be granted. In addition, Victory Church has compiled over ten pages of information which addressed every issue that they brought up. Everything they said, we had an alternative and a reason not to build the sidewalk. And so we believe all of that supports our request to not build a sidewalk. We therefore ask that the City would grant our request for a sidewalk construction waiver. Thank you. And I'm willing to answer any questions that you have now.

MS. LOE: Are there any questions for this speaker? Ms. Rushing?

MS. RUSHING: The pedestrian pathway to which you are referring, is that the widened shoulder?

MR. PUTNAM: That is six -- what they tell me, that is a six-foot pedestrian pathway and bicycle path on both sides of the road -- six foot, both sides of Ballenger Lane.

MS. LOE: Ms. Burns?

MS. BURNS: Thank you. So, Pastor, when you constructed and applied for building information

and worked with the City, in your request for a waiver, did you understand that a sidewalk was required for this project?

MR. PUTNAM: Someone earlier had asked the question of why did we agree to a plat or a design plan with a sidewalk on it if we didn't want to build one. Well, the answer is very simple. You cannot get a building permit from the City of Columbia without showing a sidewalk on your design plan. And then, at that point, if you want to contest it, which, at that point, I have never been told by anyone with the City of Columbia that you could request a sidewalk waiver until just recently when we started this process because we found out, you know, the only reason we knew about the road was we got this letter from the City of Columbia telling us about the shoulder pathways. At that point, we said why should we build this sidewalk that's going nowhere, and is connecting to nothing. And when Mr. Smith put your -- you know, your map of the streets. These homes, if you go up there and look, these homes are older homes, and you can see they're all running into Ballenger Lane. There are no sidewalks. There's no sidewalks on either side except in Thessolia Subdivision. Those people cannot access our sidewalk. They would have to cross over their backyards, which, by the way, they have a giant privacy fence across the length of their subdivision, huge ditches, huge trees, weeds everywhere. They would have to climb across there, cross Ballenger Lane, which they say is a heavy traffic road, cross our ditch, and get up on that sidewalk. I just don't see that happening.

MS. BURNS: And I -- I appreciate that. My question is, did you understand there was a requirement to build a sidewalk when you started your project?

MR. PUTNAM: When we did our site plan, we did.

MS. BURNS: Okay. Thank you.

MR. PUTNAM: But can I say something else about that?

MS. BURNS: Sure.

MR. PUTNAM: I don't want to get out of line here.

MS. BURNS: Oh, no. I -- my question is, did you understand that, and you have answered in the affirmative.

MR. PUTNAM: Yes. Our site engineer told us you have to put a sidewalk on your site plan to get it approved by the City. Without it, you don't get a building permit, so you're kind of -- if I can use this word -- I felt held hostage to have to have a sidewalk.

MS. BURNS: Thank you.

MS. LOE: Any other questions for this speaker?

MR. PUTNAM: Can I make one more comment?

MS. LOE: Of course.

MR. PUTNAM: You were talking about if the sidewalk would be placed far enough off the road for the widening plan that they said is not even in the ten-year plan, but may come someday. To do that -- can you put your picture there? Well, you can see it. You can see clear down through there, that whole tree line. To put -- they say we can build that sidewalk. But to do that, our engineer tells us to

accommodate the road and do it properly like they will want us to do, we have to tear right down through that whole section of trees and take that out. In addition, if you go back to the other side, we have another set of trees that was there for what they call a Missouri native forest and woods, which we've -- they wanted us to dig and tear that up, but our engineer says we can get -- get a pass on that because it's native Missouri trees. And we kept that for the -- the way we set our building, we kept that for beautifying that whole site, how it looks, so you're not just driving down Ballenger Lane looking at the backside of a building. That's all a nice presentation there, so -- and we've addressed a lot of these. Almost everything they've mentioned, we've addressed in our comments and remarks to the City planners.

MS. LOE: Any additional questions for this speaker? Thank you, Mr. Booker (sic).

MR. PUTNAM: Okay. Thank you very much.

MS. LOE: Any discussion? Or any additional speakers from the public? And we're going to close public comments. Any discussion?

MS. RUSHING: Well, I'll go first. I'm going to vote against the request for a waiver. I am very -- I believe sidewalks are very important and particularly in this area, and that a broadened shoulder is not really adequate space for those people who are on foot. And I've walked a lot in this town, and I've been in areas where you had to walk on the shoulder and it's not a very pleasant experience.

MS. LOE: Mr. MacMann?

MR. MACMANN: If it comes down to just the full waiver, yeah, or a sidewalk, I would vote with Commissioner Rushing. And I would say that the Third Ward, which is where this is located, has tried to get sidewalks on the CIP repeatedly, but that -- not having the votes, and that's why it's not on the ten-year. And the improvements that you're seeing on Ballenger and the improvements that you're seeing on Clark are a result of two things; one of our Council people working for years to get them on there, and the death and the severe traffic accident for walkers on Clark, not far from Ballenger, which is -- this looks like Ballenger does right there. I believe this is an integral part of the community. It's an integral part of our long-term plan, and, yes, we have older neighborhoods that aren't built with them, but most often in these cases, everyone asks for a waiver. I'm inclined to go with a minimum of a fee in lieu of, regardless of whether I think it's too low, but I am not going to vote for the full waiver.

MS. LOE: Ms. Burns?

MS. BURNS: I have one other question for staff. Were there any pedestrian counts done? Was there a way to do them when you were analyzing this particular property for a site plan and including a sidewalk on it?

MR. SMITH: No. I don't have any pedestrian counts, per se. I don't know if we collect that kind of data, but I didn't also bring that up with our Public Works staff when I was talking with them about that.

MS. BURNS: Thank you.

MS. LOE: Mr. Harder?

MR. HARDER: Has it been established when the widening -- with the walkways along the streets, any idea of when those are supposed to be done projected?

MR. SMITH: I believe -- so they're in the design phase right now, so I would expect probably at least another year, so probably maybe construction next year. I think that would be the goal, but it is --

MR. ZENNER: '19.

MR. SMITH: -- '19. 2019 is what I'm hearing.

MR. HARDER: And to confirm, he had mentioned there were six feet on each side; is that correct?

MR. SMITH: You know, I don't have that number right in front of me, but --

MR. PUTNAM: I have that number.

MR. SMITH: Mr. Putnam may have that number, so that's --

MR. HARDER: Well, you had mentioned it was six feet on each side of the road, and that's -- is that what's on Clark Lane, as well, too, is six feet on each side of the road?

MR. SMITH: I'd say that's approximately correct. I can't be exact, but if I had the full-scale drawings, I could scale them out, but I don't have those right in front of me, so --

MR. PUTNAM: That was on a letter from Public Works.

MS. LOE: Mr. Booker (sic), can you give your name and address again. I'm sorry. Just for the record.

MR. PUTNAM: I'm sorry. I'm sorry. I'm sorry. Mark Putnam, 4807 Silver Cliff Drive, Columbia.

MS. LOE: Oh, sorry.

MS. PUTNAM: Thank you. That was all in here. Thank you very much.

MS. LOE: Ms. Russell?

MS. RUSSELL: I think the fee in lieu of is just outrageous. However, I do think that a sidewalk is needed there. We've always talked about sidewalks and always have to face these waivers, and I think this road needs a sidewalk and it needs to start somewhere. It might right now go to nowhere, but it needs to start somewhere. So I'm willing to make a motion to make it easy to move to approve, but I plan to vote no.

MS. LOE: Thank you for laying out your strategy.

MR. MACMANN: Madam Chairperson, may I direct -- ask a question of Commissioner Russell?

MS. LOE: Yes.

MR. MACMANN: Would you explain that to me? I'm not sure I followed that.

MS. RUSSELL: Instead of moving to deny that everybody has to decide whether they say yes or no, if I move to approve, then everybody can choose to say no and vote down the motion.

MS. RUSHING: Which she intends to do.

MS. RUSSELL: Which I intend to do.

MR. MACMANN: Okay. Because you're making an affirmative motion?

MS. RUSSELL: Correct.

MR. MACMANN: All right. Thank you for the clarification.

MS. RUSHING: So, you've made the motion?

MS. RUSSELL: Yes.

MS. RUSHING: And then I'll second.

MS. RUSSELL: Okay. In the case of 18-180, the Victory Christian Church sidewalk waiver, I move to approve.

MS. RUSHING: Second.

MS. LOE: Okay. We have a second by Ms. Rushing. Ms. Burns, may we have a vote?

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Zero. Voting No: Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Loe, Mr. Harder, Mr. MacMann. Motion is defeated 7-0.

MS. BURNS: Seven to zero, the motion does not carry.

MS. RUSSELL: And it was six to one. sorry.

MS. BURNS: Six to one, sorry.

MR. ZENNER: Six to one, the motion fails.

MS. LOE: Who voted yes?

MS. RUSSELL: Harder. Didn't Dan -- did you say no?

MR. HARDER: I said no.

MS. RUSSELL: Okay. Then, yeah. Okay. Seven to zero.

MS. LOE: All right. It's a correction. Seven to zero.

MR. ZENNER: Seven-zero.

MS. LOE: Zero-seven.

MR. ZENNER: Zero-seven, that motion fails. And for the purposes of clarification, just so the applicant and the public are aware of what happens now after your recommendation is forwarded. This is a recommendation. Council does have ultimate final decision as to disposition of this particular case and the requested design adjustment. By super majority vote of the Council, the recommendation of denial or failure to obtain approval could be overruled, an alternative could be recommended by City Council as it relates to this. This does show up under old business on the City Council's agenda. And -- so it will show up on Council's old business agenda at the first meeting in November. With that, we are done with this particular case.

MS. LOE: Okay. Thank you.