



## Legislation Text

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**File #:** CPC SWP 16-00057, **Version:** 4

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Reconsideration of an appeal of the City Planning Commission's August 18, 2016 approval of a subdivision waiver from design standards to provide primary legal access via a public alley for the property located at 543 Robbin Place.

(Quasi-Judicial)

**Presenter:**

Michael Turisk, Planner II  
Peter Wysocki, Planning and Development Director, Planning and Community Development Department

**Summary:**

Applicant: Paul Rising  
Owner: Tara Custom Homes, Inc.  
Location: 543 Robbin Place, approximately ¼-mile west of the intersection of North Spruce and West Boulder Streets on the City's west side.

The appeal has been filed by Ms. Sara Poe on behalf of the Cooper Avenue neighborhood regarding the City Planning Commission's approval of the subdivision waiver from design standards to allow primary residential access for a new residential development via a public alley for the property addressed as 543 Robbin Place.

The original request by the applicant to the City Planning Commission was approval of a subdivision waiver in order to provide primary legal access to the 24,436-square-foot residential subject property via a public one-way alley (not a public street) known as "Robbin Place" for the ultimate purpose of constructing three duplexes.

At its regular meeting on November 8, based on a request from Council President Pro Tem Gaebler and Councilmember Knight, City Council voted to waive reconsideration rules and to reconsider this item. This item is the reconsideration of their vote to deny the appeal on October 25, 2016.

**Previous Council Action:**

City Council voted to deny the appeal on October 25, 2016.

**Background:**

This appeal is related to the City Planning Commission's August 18, 2016 approval of a subdivision waiver in order to provide primary legal access to a two-family residential-zoned property via the adjacent public one-way alley known as "Robbin Place" rather than a public street, as contemplated by the City's Subdivision Code. In addition to the requested subdivision waiver, the City Code

requires final plat review and approval in conjunction with a subdivision waiver request, and although preliminary and final plats have been submitted, those plats require administrative review and approval only. The submitted plats show the current three lot configuration and the proposed six lot configuration which would reorient the lots perpendicular to Robbin Place. The plat submittal was accompanied by the requisite geologic hazard report (discussed in more detail below) and drainage report. Therefore, the City Planning Commission's purview at the public hearing on August 18 was solely the subdivision waiver request. City Code sections 7.7.103 (D) and 7.7.1304 requires the City Planning Commission to grant or deny a subdivision waiver. Pursuant to City Code sections 7.7.103 (E) and 7.7.1304, appeals of a City Planning Commission determination on a subdivision waiver request are heard by the City Council.

The R-2 zoning district accommodates small or medium-sized lots intended primarily for detached single-family or attached two-family residential use. The property lies within a comparatively large area of residential zoning and uses in the City's west side, with multi-family zoning, primarily R-2 and to a lesser degree, R-4 (Multi-Family Residential) predominating. Also as noted, the Applicant ultimately wishes to construct three duplexes (Per Code, duplexes require a minimum of 7,000 square-feet of site area and 3,500 square-feet of site area per unit). Although such development is permitted in the R-2 zoning districts, the applicant requires a subdivision waiver in order to provide primary legal access via the adjacent alley at the east. Public alleys are intended as a secondary means of access in large part due to alleys not being constructed to public road standards. "Robbin Place" is a comparatively short (approximately 600-feet in length) and narrow (less than 20-feet in width) and unimproved public alleyway that does, however, serve several residential properties in the immediate vicinity.

Several land use-related concerns have been identified that regard the overall project as have been communicated via agency/department review as well as the Appellant. (Appellant's Appeal Letter -- FIGURE 1) Perhaps most notably, the development challenges that the property's comparatively steep slope presents. Although the area of the property with comparatively steep slope includes a preservation easement (and with the applicant indicating that no development would be proposed within the preservation area), the Colorado Geological Survey (CGS) concurs with the submitted geological hazard report (also reviewed by City Engineering) regarding the impact identified geologic hazards could have on development (e.g., slope stability, and creeping and expansive soils). The subject property is noted to have similar geology and topography constraints as nearby properties that apparently experienced recent landslide activity, and therefore demands consideration as an area susceptible to future landslide activity.

City Code section 7.7.1302 (B)(1) indicates that a subdivision waiver may be granted if it would not be detrimental to the public good or to surrounding properties. The subject property presents geologic hazards and similar hazards and concerns exist at several neighboring properties. The applicant realizes the development constraints and particular attention required to develop the property as proposed, and therefore intends to build per the recommendations of the submitted geological hazard report and those echoed by CGS. Given these concerns, staff requires that specific notes be included on the final plat in order to memorialize that future development requires acknowledgement of the identified site challenges. In addition, staff has required that a disclosure statement be included on the final plat in order for future property owners to be made aware of the geologic hazard potential and the likely development constraints and considerations as a result.

Furthermore, City Code section 7.7.1302 (B)(2) recognizes that exceptional topographic, soil or other

surface conditions particular to the property may be such that a waiver is justified. As noted, the subject property has been identified as being landslide susceptible, not unlike some other area properties; however, the site presents much more dramatic slope than properties in the general vicinity, and therefore is regarded as one exhibiting exceptional condition.

In addition, City Code section 7.7.1302 (B)(3) indicates that a waiver may be granted "...if the strict application of the requirements when applied to the property with its exceptional conditions prohibits the use of the property (or its reasonable physical development) when compared to the opportunity to use and develop similar properties in the general vicinity." The subject property has limited access, as the properties adjacent and south along West Boulder Street are not under the applicant's ownership (and are developed). In addition, the subject property does not have street frontage at North Chestnut Street to the west, as portions of North Chestnut Street were previously vacated (not by the Applicant), so legitimate rationale for the waiver, in part, suggests "not punishing" the Applicant for limited access that resulted from previous rights-of-way vacations. Even if access were able to be reasonably provided to the west along North Chestnut Street, steep slopes at this location presents additional access constraints, and would likely require significant disturbance to the preservation easement. Therefore, "Robbin Place" adjacent at the east side of the subject property is regarded as the only reasonable or viable means of access. In City staff's opinion, the plan as presented will "assure the provision of adequate and safe circulation" in conformance with the purpose of the Subdivision Code as stated at City Code section 7.7.102 (D).

Due to the narrowness of access points at the north via St. Vrain Street and at the south via West Boulder Street, the City's Fire Department has conveyed concern regarding the difficulty in safely accessing the property with large, modern firefighting apparatus. Although 20-feet of right-of-way is shown on paper along Robbin Place, from a practical standpoint, the alley could not be widened due to utilities infrastructure and several private accessory structures and driveways just off of the alleyway's pavement. Fire personnel performed a site visit to determine the degree of concern and possible mitigation needed, and confirmed that the width of the alley would be acceptable if the proposed residential units are provided with approved fire sprinkler systems, that all potholes in the alley are repaired, and that the entrances to the alley from West Boulder Street at the south and West St. Vrain Street at the north are mitigated (widened) to allow apparatus reasonable access. Staff also requires that specific notes speaking to these concerns be memorialized on the final plat.

City Code also indicates that the benefit to the public in waiving the requirement outweighs the harm to the property owner in strictly enforcing the requirement. As noted, the applicant must provide for various alleyway improvements in order to develop the project as proposed. It is therefore suggested that alleyway improvements would benefit the general public from pedestrian and vehicular access and emergency response standpoints, particularly for those residents whose residences and accessory structures lie adjacent or close to "Robbin Place."

Staff suggests that the project, albeit comparatively small, qualifies as urban infill, as it is located within a largely developed, well-defined, and older Westside neighborhood that provides for adequate services and infrastructure.

The Appellant's statement cites concern regarding the safety of permitting additional residential development (and its accompanying traffic) along the alleyway. However, despite the acknowledged increase in vehicular movements in the alleyway, the potential is not to the degree with a residential project such as what's intended that would seriously undermine the safety of cyclists, pedestrians

and/or those traveling via vehicle in the area. Despite the aforementioned concerns, staff proposes that the waiver (and ultimately the development) would be acceptable provided adequate and proper mitigation that the Applicant indicated consent to at the public hearing on August 18. Staff has carefully considered the findings and determines that the application and overall development is consistent with the review standards provided for in City Code.

Please see the attached Planning Commission staff report for additional detailed analysis, including compliance with the City's Comprehensive Plan.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

At their regular meeting on August 18, 2016, the Planning Commission approved the subdivision waiver by a 5-1 vote (Commissioner Henninger dissenting).

**Stakeholder Process:**

Public notice was provided to 120 property owners within 500-feet of the subject property during the internal review as well as prior to the Planning Commission meeting. Notice was also mailed regarding a staff-facilitated neighborhood meeting on June 4, 2016. The neighborhood meeting attracted 17 attendees whose concerns ranged from the availability of adequate and safe emergency services access, the potential for geological hazards, and the design and type of the residential development proposed. In addition, notice was posted on-site for the internal staff review, the aforementioned neighborhood meeting, the Planning Commission hearing and the appeal hearing before City Council.

Staff sent copies of the plan set and supporting documentation to the standard internal and external review agencies as well as the Colorado Geological Survey, as noted. Commenting agencies included Traffic Engineering, City Engineering and Fire Prevention.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration.

**Proposed Motion:**

Deny the appeal and affirm the Planning Commission's approval of the subdivision waiver for the property located at 543 Robbin Place based on the finding that the subdivision waiver request complies with the review criteria in City Code Section 7.7.1302.

N/A