



## Legislation Details (With Text)

**File #:** AR NV 17-00141      **Version:** 6      **Name:** 543 Robbin Place

**Type:** Planning Case      **Status:** Agenda Ready

**File created:** 5/3/2017      **In control:** City Council

**On agenda:** 10/24/2017      **Final action:** 10/24/2017

**Title:** An appeal of City Planning Commission approval of a Non-Use Variance to allow for a reduced 50-foot minimum lot width standard in the R-2 (Two-Family Residential) zone district for three (3) duplex units located at 543 Robbin Place.

(Quasi-Judicial).

**Presenter:**  
Lonna Thelen, Principal Planner, Planning and Community Department  
Peter Wysocki, Director of Planning and Community Development

**Sponsors:**

**Indexes:** Appeals

**Code sections:**

**Attachments:** 1. FIGURE 1A.rev - Preliminary Plat, 2. 7.5.802 Nonuse Variance

Date	Ver.	Action By	Action	Result
10/24/2017	6	City Council	denied	Fail
9/26/2017	5	City Council	postpone to a date certain	Pass
9/12/2017	5	City Council	postpone to a date certain	Pass
8/22/2017	4	City Council	postpone to a date certain	Pass
7/20/2017	3	Planning Commission	approved	Pass
6/15/2017	2	Planning Commission	postpone to a date certain	Pass
5/18/2017	1	Planning Commission	postpone to a date certain	Pass

An appeal of City Planning Commission approval of a Non-Use Variance to allow for a reduced 50-foot minimum lot width standard in the R-2 (Two-Family Residential) zone district for three (3) duplex units located at 543 Robbin Place.

(Quasi-Judicial)

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**Summary:**

Appellant: John and Mary Osborn; Dee Dengler  
Applicant/Owner: Paul Rising  
Location: 543 Robbin Place

An appeal was filed with the City Clerk on July 28, 2017 regarding the City Planning Commission's unanimous decision rendered on July 20, 2017 to approve a subdivision waiver (to allow for primary access to the subject property via an adjacent public alley [not a public street]), and associated preliminary and final plat applications (to replat the subject property into six lots). (EXHIBIT 1)

City Planning Commission also approved a non-use variance application to allow less than the minimum 50-foot lot width required in the R-2 (Two-family Residential) zoning districts; however, this non-use variance approved by the City Planning Commission is not being contested.

The vacant subject property is generally located between West Boulder and West St. Vrain Streets and North Chestnut and Cooper Avenue on the City's Westside.

**Previous Council Action:**

A similar preliminary/final plat application and subdivision waiver were submitted for this property on April 20, 2016. After internal staff review, the subdivision waiver only was heard and approved at the City Planning Commission hearing on August 18, 2016.

An appeal of City Planning Commission's decision was submitted to the City Clerk on August 29, 2016 and at the appeal hearing October 25, 2016, City Council rendered a 4-4 vote, thus denying the appeal (and reaffirming City Planning Commission's approval). A reconsideration hearing by City Council on November 22, 2016 resulted in formal withdrawal of the applications from the record so as to allow City Council to direct the applicant to submit new applications so that staff and City Planning Commission may formally consider the applications collectively. Consequently, the appellants withdrew the appeal.

The City Planning Commission decision made at the July 20, 2017 hearing was appealed to City Council on July 28, 2017. The appellant requested a postponement that was heard and approved at the August 22, 2017 City Council hearing. The postponement was to a date certain of September 12, 2017.

A second postponement requests was provided by the appellant to postpone the hearing until September 26, 2017. The postponement request was approved by City Council on September 12, 2017 to a date certain of September 26, 2017.

This item was heard at the September 26, 2017 City Council meeting. After a presentation by staff, the appellant, and the applicant and comments from citizens, City Council questioned if the alley could be widened from 12 feet to 20 feet. City Council voted 7-0 to postpone the item until the October 24, 2017 City Council meeting to allow time for staff to research the possibility of widening the alley. The staff discussion on the ability to widen the alley is located in the background section of this memo.

**Background:**

The need for a subdivision waiver application is triggered by City Code provisions that classify alleyways as secondary means of access due largely to their less stringent design and construction standards compared with streets. Per 7.7.1301 and 7.7.1302, a subdivision waiver is defined as authorization to deviate from either the procedural requirements or the design standards of the City's Subdivision Regulations and must be requested concurrently with any subdivision application.

In order to support the subdivision waiver to allow primary access from an alley, staff required of the

applicant alley repair and reconstruction plans as part of the preliminary/final plat review. Staff felt this was necessary to ensure that any proposed repair/reconstruction of the alley is practically feasible before rendering a recommendation on the project. This initial design work would illustrate whether or not the alley could handle the traffic and potential need for emergency service vehicles; and ultimately be a very important factor in determining a recommendation. This documentation has been added as part of the preliminary/final plat. Based on the design plans, the alley intersections with the local streets can be modified to accommodate large fire trucks. Reconstruction of the alley and the mitigation proposed as described will be verified at the building permit phase. Notes have been added that construction be completed prior to the issuance of the final Certificate of Occupancy.

Associated with the waiver request is the preliminary/final plat application. The plat application proposes six lots that would be oriented perpendicularly to the comparatively short and narrow alleyway in order to facilitate alleyway access per the subdivision waiver. The preliminary and final plats - like the other associated applications - would serve to ultimately construct three duplexes, a residential use permitted in the R-2 zoning district. While there will be three duplex structures, each individual unit will be situated on an individual lot; thus platting the common wall of the duplex structure as the individual ownership of each unit. When platting individual duplex units, each lot must contain 3,500 square feet in the R-2 zone district.

A preservation area is depicted on the westerly portion of all lots. This preservation area dictates a no-build area and cannot be disturbed or graded per the requirements as outlined in City Code Section 7.7.108.

Please see the attached City Planning Commission staff report for additional detailed analysis.

At the September 26, 2017 City Council meeting, City Council asked staff to evaluate the ability to increase the 12-foot pavement mat of the alley to a 20-foot pavement mat. Staff asked the applicant to provide a drawing of the 20-foot right-of-way as illustrated in EXHIBIT 2. This exhibit shows the location of the right-of-way and the structures (buildings, retaining walls, and/or patios) that extend into the existing alley right-of-way.

Planning staff met internally with Engineering, Fire, and Utilities to determine if the expansion was possible. The outcome was that expanding to a 20-foot wide alley pavement mat is not feasible due to the following issues:

1. There are existing structures in the alley that would need to be removed or torn down. Removal of retaining walls would require homeowners to build new retaining walls on their property or force this developer to negotiate with individual owners on the replacement of structures that have a long history of placement within the right-of-way. Historically, the City has not required property owners to remove retaining walls, structures or patios in the right-of-way unless the City has a road improvement project that requires the right-of-way. Per EXHIBIT 2, the main properties that have impacts to the alley are listed below.

The structure at 539 W St Vrain was built in 1952; it is uncertain when the retaining wall and patio that are within the alley right-of-way were constructed for this site.

The structure at 427 North Chestnut was built in 1962; it is uncertain when the retaining wall that is within the alley right-of-way was built on the site.

The structures at 408, 412, 414 and 420 Cooper Avenue were built in 1905, 1919, 1919 and 1908 respectively and all have accessory structures that are either on the property line or over the property line. It is uncertain when the accessory structures were built on these properties.

2. The electrical service is currently overhead and the poles are located within the proposed 20-foot pavement area. The poles would either need to be moved onto private property adjacent to the right-of-way or placed underground. Both options would require additional easements from all homeowners along the alley. Colorado Springs Utilities standard easement width for the accommodation of gas, electric, water and sewer is 50 feet. In order to accommodate a 50-foot wide easement, a 15-foot easement to the east and west of the 20-foot right-of-way would be required.

3. The current drainage plan is to convey the drainage along the western side of the right-of-way. To expand to a 20-foot pavement mat would require the drainage to be reconfigured. There are two options for new configuration:

A. The first option would widen the pavement mat while keeping the drainage along the west side of the alley. This configuration would require additional retaining walls adjacent to the alley on private property as the 20-foot right-of-way is not adequate for a wider pavement mat and vertical infrastructure. These additional retaining walls would be on private property to allow the expansion for drainage and would be paid for by the developer as it is unlikely that the property owners are willing to pay for additional retaining walls.

B. The second option would be to build a concrete alley with an inverted crown. This new configuration would need to be built for the entire stretch of the alley. The inverted crown design requires concrete construction which would add a significant cost for the developer. The same issues would be present with the retaining walls on private property for this option.

4. Any grading occurring adjacent to the alley at 423 and 427 North Chestnut would require a four to five-foot grade removal to accommodate the alley widening. This would create a very steep transition from driveways to the alley. Again, it is unlikely the property owner would pay for this grade change and if the grade change was allowed by the homeowner, the developer would need to pay for these grading changes.

The 12-foot alley as proposed has been reviewed by Engineering, Fire and Utilities and all agencies have approved of the alley to provide adequate access into the site. The proposed 12-foot alley was designed and approved through the drainage report to collect the drainage along the west side of the alley in a concrete curb and gutter and take the drainage down to Boulder Street. The Fire Department mitigation for the 12-foot alley included the requirement for all homes to have a sprinkler system, the cross pan at the southern entrance to be reconstructed, and a letter from a professional engineer stating that the northern access point could support a fire truck. The Fire Department access roads are required to be 20 feet wide; however, when homes are sprinklered there is an allowance for flexibility to the code requirement. In addition, when the homes are sprinklered the use of the ladder truck is less likely.

Currently, if a fire occurs along Chestnut, the alley would be used to allow fire trucks to line up to assist to fight the fire. The improvement of this alley will only assist in ensuring that the homes in this neighborhood can be protected in the event of a fire.

## **Financial Implications:**

N/A

**Board/Commission Recommendation:**

At their regular meeting on July 20, 2017, the Planning Commission voted 9-0 to grant the request for the subdivision waiver and the associated preliminary and final plat applications. See the minutes from the hearing for a full record of the discussion and decision.

**Stakeholder Process:**

Public notice was mailed to property owners within 1,000-feet of the subject property during the internal review phase and prior to the staff-facilitated neighborhood meeting on February 6, 2017. In addition, notice was mailed prior to the public hearing before City Planning Commission on May 18, 2017. The applicant posted a notice on-site during the internal review phase, prior to the staff-facilitated neighborhood meeting on February 6, 2017 and prior to the City Planning Commission hearing on May 18, 2017.

There were approximately twenty (20) residents who attended the neighborhood meeting on February 6, 2017, many of whom voiced concerns regarding drainage, landslide potential, adequate emergency services and residential access and proposed building aesthetics and design. At this meeting the applicant's surveyor, and drainage and geotechnical engineers fielded questions regarding the concerns noted above related to the plat and the drainage and geotechnical reports, and mitigation to be considered to control potential runoff and ensure structural integrity.

Furthermore, the applicant met with neighbors as well as representatives from the Council of Neighbors and Organizations (CONO) and the Organization of Westside Neighbors (OWN) on January 21, 2017 to discuss the previously noted concerns about land slippage, drainage and the potential negative safety impacts of additional residences at the site.

A neighborhood meeting was held on May 15<sup>th</sup> in order to inform the neighbors of changes to the plans made since first review of the submittal. Staff and the applicant were in attendance. Approximately eight neighbors were in attendance at the meeting. The topics of discussion included how the alley is going to accommodate the drainage, how fire access will be accommodated on the south and north entrance to the alley, the effect the nonuse variance for lot width has on the project, the liability of future issues surrounding the geologic hazard concerns, and the architectural design of the houses proposed. Staff has continued to keep the neighborhood updated on new submittals from the applicant.

The applicant resubmitted updated plans on June 2<sup>nd</sup>. The intent of this resubmittal was to address the outstanding items for the May 18<sup>th</sup> Planning Commission hearing. Staff's opinion at that time was that the resubmittal did not address all of the comments and another submittal was required prior to the July 20<sup>th</sup> CPC hearing.

The applicant has most recently provided staff with updated documents dated June 25, 2017. Those documents were sent to the neighbors. Staff met with the neighbors prior to the July 20 CPC hearing to review those documents. The updated plan reflects utilities, drainage and alley reconfiguration and construction and were the basis for CPC review and action.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;

3. Grant the appeal and reverse the action of the City Planning Commission - granting of the appeal will essentially deny the project as proposed; or
4. Refer the matter back to the City Planning Commission for further consideration

**Proposed Motion:**

CPC SWP 16-00155 - SUBDIVISION WAIVER

Deny the appeal and uphold the City Planning Commission decision to approve the subdivision waiver of design standards for the property located at 543 Robbin Place, based on the finding that the applicant met the subdivision waiver review criteria contained in City Code Section 7.7.1302.

CPC PFP 16-00156 - PRELIMINARY/FINAL PLAT

Deny the appeal and uphold the City Planning Commission decision approve the preliminary/final plat for 543 Robbin Place based upon the finding that the applicant met the preliminary and final plat review criteria contained in City Code Section 7.7.102, 7.7.204 and 7.7.303, subject to compliance with the technical and/or informational plan modifications and noted in the minutes from the July 20, 2017 City Planning Commission Hearing.

CPC NV 17-00141 - NON-USE VARIANCE

Deny the appeal and uphold the City Planning Commission decision approve the non-use variance to allow a lot width of less than 50 feet as required per City Code Section 7.3.104.A, based upon the finding that the applicant met the nonuse variance review criteria contained in City Code Section 7.5.802.B.

Summary of Ordinance Language  
N/A