

STAFF REPORT
January 6, 2005

No. 04SV077 – Variance to the Subdivision Regulations to waive requirement to dedicate additional right-of-way and to install curb, gutter, sidewalk, street light conduit, sewer, water and pavement along Elm Avenue as it abuts the subject property as per chapter 16.16 of the Rapid City Municipal Code

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GENERAL INFORMATION:

PETITIONER	Sperlich Consulting, Inc. for Jim Scull
REQUEST	No. 04SV077 – Variance to the Subdivision Regulations to waive requirement to dedicate additional right-of-way and to install curb, gutter, sidewalk, street light conduit, sewer, water and pavement along Elm Avenue as it abuts the subject property as per chapter 16.16 of the Rapid City Municipal Code
EXISTING LEGAL DESCRIPTION	Lot B of N1/2 of Government Lot 4 less Craig Estates all located in Section 18, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Lots 15-17 of Block 1, Lots 7-19 of Block 2, and Lots 2-6 of Block 3, Kennsington Heights Subdivision, located in the SW1/4 of the SW1/4, Section 18, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 5.47 acres
LOCATION	Southwest of the intersection of Elm Avenue and Field View Drive
EXISTING ZONING	Low Density Residential District
SURROUNDING ZONING	
North:	Low Density Residential District
South:	General Agriculture District
East:	General Agriculture District
West:	Low Density Residential District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	12/16/2004
REVIEWED BY	Vicki L. Fisher / Curt Huus

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RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to dedicate additional right-of-way and to install curb, gutter, sidewalk, street light conduit, sewer, water and pavement along Elm Avenue as it abuts the subject property as per chapter 16.16 of the Rapid City Municipal Code be denied.

GENERAL COMMENTS:

The applicant has submitted a Variance to the Subdivision Regulations request to waive the requirement to dedicate additional right-of-way and to install curb, gutter, sidewalk, street light conduit, sewer, water and pavement along Elm Avenue as it abuts the subject property. On October 7, 2004 the Planning Commission recommended approval of a Preliminary Plat to subdivide the subject property into 21 residential lots. A stipulation of the Preliminary Plat approval requires that the eastern portion of the Elm Avenue right-of-way be dedicated either on a separate plat document or as an "H" Lot prior to City Council approval. To date, the right-of-way has not been dedicated as identified and, subsequently, the City Council continued the Preliminary Plat to the January 3, 2005 City Council meeting.

The property is located at the southern terminus of Elm Avenue on the west side of Elm Avenue and is currently void of any structural development. The subject property is known as Phase Two of Kennsington Heights Subdivision.

STAFF REVIEW:

Staff has reviewed the Variance to the Subdivision Regulations request and has noted the following considerations:

Elm Avenue: On October 4, 2004, the City Council approved a Preliminary Plat to create a 7.751 acre lot on property located directly east of the subject property. In addition, the Preliminary Plat identified the dedication and construction of Elm Avenue, including the portion of Elm Avenue that abuts the subject property. To date, the owner of the adjacent property has not submitted a Final Plat and the adjacent Elm Avenue right-of-way has not been dedicated.

The applicant is proposing to dedicate that portion of Elm Avenue right-of-way located on the subject property, a small pie shaped piece of property located along the west lot line. However, the Subdivision Regulations states that "...all thoroughfares in the major street plan shown as crossing or bordering a proposed subdivision are required to be provided in the location and at the right-of-way width designated thereon". Elm Avenue is designated on the Major Street Plan as a minor arterial street. In addition, the location of Elm Avenue right-of-way as shown on this plat and the adjacent plat are in compliance with the location of the street as shown on the Major Street Plan. As a part of this plat review and approval, the balance of the Elm Avenue right-of-way must be dedicated either as an "H" Lot, on a separate plat document or included on this plat document. In addition, Elm Avenue must be constructed with a minimum 40 foot wide paved surface, curb, gutter, sidewalk, street light

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conduit, water and sewer.

This request raises significant questions regarding the coordination of improvements for roads that border multiple properties. The Planning Commission and City Council have only waived the requirement to improve the adjacent street in extremely rare instances. In the one instance the staff could identify, the requirement was waived for a section line highway where the adjacent property owner indicated that they did not want to develop their property. Subsequently, the section line highway was vacated resolving the issue.

As noted above, the adjacent property owner has obtained Preliminary Plat approval by the City Council. The Preliminary Plat shows the dedication of the balance of the Elm Avenue right-of-way located adjacent to the subject property. The applicant may either: 1) coordinate the dedication of right-of-way with the adjacent property owner; 2) a revised Preliminary Plat for the subject property may be submitted for review showing all of the dedication of the Elm Avenue right-of-way from the applicant's property as required. However, it should be noted that several Layout Plats have been approved for the area to the south showing Elm Avenue as currently proposed. Relocating Elm Avenue onto the subject property would be in conflict with the previously approved Layout Plats. As such, staff is recommending that the applicant coordinate the dedication of the Elm Avenue right-of-way with the adjacent property owner.

Legal Notification Requirement: The receipts from the certified mailings have not been returned. Staff will notify the Planning Commission at the January 6, 2005 Planning Commission meeting if this requirement is not met. Staff has not received any calls or inquires regarding this proposal.