

STAFF REPORT  
September 20, 2007

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**No. 07SV044 - Variance to the Subdivision Regulations to reduce the right-of-way requirement from 68 feet to 54.6 feet for a 481 foot portion of the proposed extension of Philadelphia Street** **ITEM 36**

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GENERAL INFORMATION:

APPLICANT/AGENT	Brian Gonzalez for Century Development Co.
PROPERTY OWNER	Bryan Gonzales/Century Development Co.
REQUEST	<b>No. 07SV044 - Variance to the Subdivision Regulations to reduce the right-of-way requirement from 68 feet to 54.6 feet for a 481 foot portion of the proposed extension of Philadelphia Street</b>
EXISTING LEGAL DESCRIPTION	The north 327.2 feet of the N1/2 SE1/4, Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota; excepting therefrom the W1/2 NW1/4 SE1/4 and excepting therefrom Lot 1 of Lot B of the NE1/4 SE1/4, as shown on the plat filed in Plat Book 3, Page 103; and excepting therefrom North Boulevard Addition; and excepting therefrom Lot RU-302A of the Original Townsite of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 14, Page 53; and excepting therefrom Lot RU-302B of the Original Townsite of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 14, Page 94; and excepting therefrom any streets or highway rights of way
PROPOSED LEGAL DESCRIPTION	Lots 1 thru 28 of Block 1 and Lots 1 thru 24 of Block 2 of LaVilla Vista Subdivision and dedicated Right-of-Way, located in Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 7.98 acres
LOCATION	1400 Philadelphia Street
EXISTING ZONING	Office Commercial District
SURROUNDING ZONING	
North:	Park Forest District
South:	Flood Hazard District
East:	Medium Density Residential District
West:	Office Commercial District

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PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	7/30/2007
REVIEWED BY	Vicki L. Fisher / Todd Peckosh

RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to reduce the right-of-way requirement from 68 feet to 54.6 feet for a 481 foot portion of Philadelphia Street be denied.

GENERAL COMMENTS:

**(Update, September 11, 2007. All revised and/or added text is shown in bold print.) On September 6, 2007, the Planning Commission continued the Variance to the Subdivision Regulations request to allow the applicant to meet with the adjacent property owner to discuss obtaining the additional right-of-way from the adjacent property. As of this writing, the applicant has not submitted information identifying that the additional right-of-way will be provided as required.**

(Update, August 27, 2007. All revised and/or added text is shown in bold print.) This item was continued at the August 23, 2007 Planning Commission meeting to allow the applicant to submit additional information. On August 27, 2007, the applicant submitted a revised site plan, a revised plat document and a revised letter of intent.

The applicant has submitted a Variance to the Subdivision Regulations to reduce the right-of-way width for the eastern 481 feet of Philadelphia Street as it abuts the property from 68 feet to 54.6 feet. In addition, the applicant has submitted a Preliminary Plat (#07PL090) to subdivide the property into 52 lots. The applicant has also submitted an Initial and Final Planned Residential Development (#07PD047) to allow the development of 51 townhome units and a clubhouse on the property.

On January 5, 2006, the Planning Commission approved an Initial Residential Development Plan (#05PD079) to construct a 96 unit condominium development on the property. On July 5, 2007, the Planning Commission approved a SDCL 11-6-19 Review (#07SR025) to construct Philadelphia Street and 11<sup>th</sup> Street located adjacent to the property. The applicant has subsequently revised the proposed development plan for the property and submitted the Initial and Final Planned Residential Development application as identified above. In addition, the applicant is currently constructing Philadelphia Street and 11<sup>th</sup> Street.

The property is located between Founders Park Drive and west of 11<sup>th</sup> Street and is currently void of any structural development.

STAFF REVIEW:

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

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Philadelphia Street: The City's Major Street Plan shows Philadelphia Street, located along the south lot line of the property, as a collector street requiring that the street be located in a minimum 68 foot wide right-of-way and constructed with a minimum 32 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. However, the applicant is proposing to relocate Philadelphia Street from the south lot line to the north lot line of the property. As such, the construction plans must show the street located within a minimum 68 foot wide right-of-way and constructed as identified above. The plat identifies the western 655 feet of Philadelphia Street within an existing 68 foot wide access and utility easement. In addition, the plat document identifies the eastern 481 feet of Philadelphia Street within an existing 30 foot wide dedicated right-of-way and an existing 24.62 foot wide access and utility easement for a total width of 54.62. The construction plans reviewed and approved as a part of the SDCL 11-6-19 Review (#07SR025) stipulated that the future location of Philadelphia Street along the north lot line must be located within a minimum 68 foot wide right-of-way and/or an access and utility easement. As such, the plat document must be revised to show the eastern portion of Philadelphia Street located within 68 feet of right-of-way, or 13.38 additional feet of right-of-way, or a Variance to the Subdivision Regulations must be obtained. Please note that the construction plans submitted with the SDCL 11-6-19 Review application identified the street being constructed within 68 feet of right-of-way. In particular, the construction plans identified the construction of a retaining wall within the northern 13.38 feet of right-of-way. Since approval of the SDCL 11-6-19 Review, staff has become aware that an easement and/or right-of-way was not obtained from the adjacent property. Instead, the applicant has indicated that the retaining wall is being constructed within an existing 13.90 foot wide utility easement currently located along the south lot line of the adjacent property. The applicant has also indicated that the retaining wall is needed as an appurtenance to the existing overhead electric lines in order to support the poles. Staff has met with the applicant and a representative from Black Hills Power and have indicated that a statement from Black Hills Power is needed stating that the retaining wall is an appurtenance to their utility or the applicant must secure an access easement from the adjacent property owner or the street must be redesigned to show the entire dedication of the 68 feet of right-of-way from the owner's property.

Staff met with the applicant and his representative again on August 14, 2007 to discuss this project. It was identified that visitor parking at a ratio of one parking space per residence located within 300 feet of the residence must be provided, or in this case 51 visitor parking spaces. The applicant indicated that visitor parking would be provided along Philadelphia Street. Even if Black Hills Power indicates that the retaining wall may be located within their utility easement as an appurtenance to their utility, additional right-of-way along Philadelphia Street may be required in order to provide the minimum required visitor parking spaces.

To date, the applicant has not identified visitor parking for the proposed townhome development. On August 27, 2007, the applicant submitted a revised letter of intent stating that visitor parking will be provided along the south side of LaVilla Vista Place. However, the plat document identifies the street located within a 47 foot wide easement which does not allow for on-street parking. In addition, the applicant submitted a revised site plan showing 49 visitor parking spaces along the south side of Philadelphia Street. Two of the

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originally proposed townhome units have also been eliminated from the site plan reducing the number of townhomes from 51 units to 49 units. In addition, the revised site plan shows that each parking space located along Philadelphia Street measures nine feet in width by 20 feet in length. However, the Parking Regulations state that a parallel parking space must be a minimum nine feet in width by 22 feet in length. As such, the site plan must be revised to show each parallel parking space with a minimum 22 feet in length. Revising the site plan as identified will eliminate several of the parking spaces resulting in an insufficient number of visitor parking spaces being provided. **As noted above, the applicant has submitted a revised site plan showing 37 visitor parking spaces along Philadelphia Street. However, the requirement is to provide a minimum of 49 visitor parking spaces located within 300 feet of the residence or an Exception must be obtained. On September 11, 2007, an Exception request to reduce the number of required visitor parking spaces from 49 spaces to 37 spaces was denied. As such, a revised site plan must be submitted showing a minimum of 49 visitor parking spaces located within 300 feet of the residence or an appeal to the Exception request must be submitted and approved by the City Council.**

Black Hills Power has not indicated that the retaining wall is an appurtenance to their utility line. The applicant has submitted a letter signed by Mark Carda, Engineering Manager for Black Hills Power, stating that the recent excavation along the power poles will require that the poles be supported either by the placement of retaining walls or by adding additional soil, compacting and maintaining a slope of no more than 2:1 from the point of excavation. The City Attorney's Office reviewed the letter and submitted a written response to the applicant stating that by approving any plans, or allowing this project to proceed, the City is in no way endorsing, approving or otherwise offering any opinion as to the legality of placing the proposed retaining wall on private property, within the Black Hills Power Utility Easement.

Reducing the right-of-way width from 68 feet to 54.6 feet does not allow sufficient room within the right-of-way to maintain and/or replace the storm drainage inlets located along Philadelphia Street if needed. In particular, the City would be required to obtain easement(s) and/or right-of-way from the adjacent property owner to maintain the storm drainage inlets. In addition, a minimum ten foot separation from the storm sewer line to the right-of-way line is desirable. Reducing the right-of-way as proposed reduces the separation from ten feet to less than four feet. Reducing the right-of-way as proposed also precludes the ability to construct a sidewalk, as per the Street Design Criteria Manual, along the north side of Philadelphia Street if needed in the future to accommodate pedestrian traffic as this area continues to develop. As such, staff is recommending that the Variance to the Subdivision Regulations to reduce the right-of way width along Philadelphia Street be denied.

**Legal Notification Requirement: The receipts from the certified mailings have been returned. Staff has received two calls of inquiry regarding this proposal.**