

GENERAL INFORMATION

Applicant: Boisclair Corporation (Owner)

Location: 8100 Knox Avenue South

Request: 1) Platting variance to defer payment of park dedication fees for the Final Plat of RESERVOIR PARK 3RD ADDITION
2) Change in Condition to revise condition #7 of Resolution #2018-77 related to park dedication fees

Existing Land Use and Zoning: Multiple-family residential; zoned RM-50(PD), Multiple-Family Residential (Planned Development)

Surrounding Land Use and Zoning: North – Retail; zoned C-5
South – Single-family residential; zoned R-1
East – Office; zoned C-4(PD)
West – Reservoir; zoned R-1

Comprehensive Plan Designation: High Density Residential

HISTORY

City Council Action: 06/04/2018 – Approved the Final Plat of RESERVOIR PARK 3RD ADDITION (Case #PL2018-143)

CHRONOLOGY

Planning Commission 02/14/2019 Recommended approval (Vote: 7-0)
City Council 02/25/2019 Public hearing scheduled

DEADLINE FOR AGENCY ACTION

Application Date: 01/09/2019
60 Days: 03/10/2019
Extension Letter Mailed: No
120 Days: 05/09/2019
Applicable Deadline: 03/10/2019
Newspaper Notification: Confirmed (01/31/2019 Sun Current – 10 day notice)
Direct Mail Notification: Confirmed (500-foot buffer – 10 day notice)

STAFF CONTACT

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PROPOSAL

Boisclair Corporation is requesting a Platting Variance and Change in Condition to defer the payment of park dedication fees associated with the plat of RESERVOIR PARK 3RD ADDITION until the issuance of a building permit. The plat, splitting the single parcel located at 8100 Knox Avenue South into two, was approved on June 4, 2018 (Resolution #2018-77, Case #PL2018-143). The site currently has 212 units of senior housing affordable at 30% of Area Median Income (AMI) in an existing 15-story building, called Knox Landing, located on the southern half of the property. The plat was approved with several conditions, including that park dedication fees be paid prior to the recording of the plat as required by City Code (Sec. 22.10). Condition #7 of Resolution #2018-77 reads the following:

7. Park dedication must be satisfied.

The applicant requests that Condition #7 of Resolution 2018-77 be revised to read the following:

7. Park dedication fees must be satisfied prior to the issuance of a building permit.

The applicant also requests a platting variance to allow the deferral of park dedication fee payment.

The Platting Variance and Change in Condition, if approved, would allow the plat to be recorded without satisfying the park dedication requirement prior to recording, thereby subdividing the property from one parcel into two parcels. As proposed, the required park dedication fee would be paid to the City prior to the issuance of a building permit for a residential development on the northern portion of the site, currently where surface parking is located. The 2018 park dedication fee has been estimated by the City's Assessing Division to be \$223,227. The actual amount would be based on the rate structure in place at the time of building permit is issued.

The subject property has an affordable 212-unit apartment building and is subject to a Project Based Section 8 Housing Assistance Payment (HAP) contract administered the Minnesota Housing Finance Agency (MHFA). The HAP contract specifies the rental terms and conditions by which the property becomes eligible for housing assistance payments through the Section 8 voucher program. To memorialize these terms, the property is subject to land use restrictive covenants that are recorded against the property. The purpose of the plat is to subdivide the property into two lots, thereby separating the existing apartment building (located on Lot 2) from the portion of the site intended for future development (Lot 1). The subdivision is necessary to remove the land use restrictive covenants on Lot 1 while keeping the covenants in place on Lot 2. Releasing Lot 1 from the restrictive covenants would allow the property owner to pursue the development of additional housing on the vacant land. As

part of the plat application, a preliminary site plan showing a five-story, 124-unit senior and assisted living facility was included as a means to illustrate future development potential. According to the applicant, future residential development cannot be pursued until Lot 1 is released from the restrictive covenants, which requires the recording of the plat.

The property owner is requesting the required park dedication fee payment be deferred until the issuance of a building permit for future development. Should the request be approved, the owner could then pursue the development of the northern property (Lot 1) following the removal of the restrictive covenants in a manner consistent with the City's Comprehensive Plan and the Penn American District Plan. The property owner would pay the park dedication fee once the final scope of development was certain and financing secured.

ANALYSIS

Typically, the plat recording must be satisfied prior to issuance of a building permit. In all cases, City Code requires park dedication requirements be satisfied prior to the recording of a plat. In the case of Knox Landing, 8100 Knox Avenue South, the property is currently a platted lot (Lot 3, Block 1, RESERVOIR PARK 2ND ADDITION). The City Code would not require the property to be replatted in order for a building permit to be issued for a second residential building. Rather, the applicant pursued the plat application in order to subdivide the site to release the land use restrictive covenants associated with the HAP contract on Lot 1 of the new plat. The existence of a land use restrictive covenant related to rental terms and conditions is a circumstance unique to affordable housing developments participating in public housing assistance programs. Without the release of the restrictive covenants, the property owner will be unable to pursue financing to construct additional housing on the site, as the title will be encumbered.

Staff has confirmed the property is subject to a HAP contract governed by the MHFA. The covenants are recorded against the title of the entire property, presenting a challenge with respect to the financing of future housing on the site, as the rent or affordability restriction is unlikely to be established at the same level as the existing 212-unit senior housing building (30% AMI). Typically, the park dedication fees associated with a plat for new development are paid once financing for a project is secured. In this case, the property owner is unable to initiate the pursuit of financing until the plat is recorded, representing a unique challenge.

Unlike zoning variances, platting variances are evaluated based on the "unusual hardship" test (Sec. 22.07(d)). The Planning Commission and staff have reviewed the required findings for the platting variance and believes the application has merit. The existence of these type of restrictive covenants represent a unique hardship in the pursuit of the development. The Planning Commission and staff are recommending approval of the Platting Variance and Change in Condition applications, subject to a condition that the park dedication fee associated with the plat of RESERVOIR PARK 3RD ADDITION be paid prior to the issuance of any building permit for future development located at 8100 Knox Avenue South. Staff has prepared draft findings in the section that follows.

Planning Commission Review

The Planning Commission considered the application at the February 14, 2019 meeting. No public comments were received at the meeting. Following questions to staff and further discussion, the Planning Commission recommended approval of the application. Further detail about the Planning Commission discussion is found in the attached minutes.

FINDINGS

Required Platting Variance Findings – Section 22.07(d)(1-5)

Platting variances may only be approved when:

Required Finding	Finding Outcome/Discussion
(1) An unusual hardship exists that justifies the platting variance.	Finding Made – As part of the existing affordable housing development, the property is subject to land use restrictive covenants as required by a Housing Assistance Payment (HAP) contract. The recording of the plat is necessary to release the restrictive covenants on the portion of the site the property owner seeks to develop as additional housing. Without the restrictive covenant release, the vacant portion of the site would remain encumbered and could not receive the necessary financing for new residential development. The existence of restrictive covenants on the property related to affordable housing is an unusual hardship that justifies the platting variance.
(2) The unusual hardship is not the result of actions of the applicant.	Finding Made – The land use restrictive covenants that encumber the property are required as part of a Housing Assistance Payment contract as governed by the Minnesota Housing Finance Agency. The property owner cannot seek financing for future residential development without the release of the restrictive covenants. The existence of the restrictive covenants are not the result of actions of the applicant.
(3) The platting variance requested is the minimum variance necessary to address the unusual hardship.	Finding Made – As proposed by the applicant, the park dedication fees would still be paid prior to the issuance of a building permit for future housing. The deferment of the park dedication fees until prior to building permit is the minimum variance necessary to address the hardship.

Required Finding	Finding Outcome/Discussion
(4) The platting variance will not conflict with the purpose and intent of the city code.	Finding Made – The purpose and intent of the park dedication ordinance is for each development to contribute towards the City’s park system in proportion to the burden that the development will place upon the system. As proposed, the deferment of payment of the park dedication fee until prior to the issuance of a building permit will not inhibit the collection of said fee prior to when the burden of future development on the park system is realized. Prior to future residential development being constructed, the required park dedication fee must be collected, thereby contributing to the City’s park system at a satisfactory level and meeting the intent of the City Code.
(5) The platting variance will not have a substantially detrimental impact on neighboring property owners or the public welfare.	Finding Made – A platting variance to defer the payment of a park dedication fee until prior to the issuance of a building permit will not have a substantially detrimental impact on neighboring property owners or the public welfare.

RECOMMENDATION

The Planning Commission and staff recommend approval of the application through the following motion:

In Case PL2019-9, having been able to make the required findings, I move to adopt a resolution approving a Platting Variance and Change in Condition to defer the payment of park dedication fees associated with the plat of RESERVOIR PARK 3RD ADDITION, subject to the condition listed in the resolution.

RECOMMENDED CONDITIONS OF APPROVAL

Case PL2019-9

Project Description: Platting Variance and Change in Condition to defer payment of park dedication fees until prior to the issuance of a building permit

Address: 8100 Knox Avenue South

The following condition of approval is arranged according to when it must be satisfied. In addition to the condition of approval, the use and improvements must also comply with all applicable local, state, and federal codes.

1. Prior to Permit Park dedication fees must be paid prior to the issuance of a building permit on Lot 1, Block 1 RESERVOIR PARK 3RD ADDITION.