



CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

MEMORANDUM

To: Chair Spivey and Planning Commission Members

From: Amy Ainslie, Planning Director

Date: September 16, 2022

Subject: V 22-15 – Platting Variance for P 22-07

P 22-07 is a request to subdivide Lot 3, West Woodbury Subdivision located at 300 Kramer Avenue into four lots. Currently, the lot is undeveloped and vacant. SGC 21.40.030(B) states “...No more than four lots shall be served by private utility easements.” The applicant is requesting to serve the resulting Lots 1-3 via the private sewer system that was installed for the neighboring Tisher and JPJL Subdivisions which currently has approval for eight lots to connect to it – this request would raise the total to eleven. While not the subject of this platting variance, it is also notable that the applicant plans to serve the resulting Lots 1-3 via the private water system that was installed in the Kramer Avenue right-of-way; consideration of water service is included in staff analysis for the subdivision.

PLATTING HISTORY

The Tisher Subdivision (a five-lot minor hybrid subdivision) and the JPJL Subdivision (a two-lot minor subdivision) moved in concert with one another (completed in late 2019/early 2020), as Michael Tisher (owner/developer of the Tisher Subdivision) wished to develop his property on Kramer Avenue and needed access through the neighboring property (which became the JPJL Subdivision) to connect a private sewer line to the main in Halibut Point Road. This was also a desirable partnership as the northern portion of the JPJL subdivision was able to gain access via Kramer Avenue. It was the understanding that Tisher would purchase the resultant Lot 1, JPJL and develop it in conjunction with his subdivision. Tisher also installed an extension of the city’s water main which previously terminated near Emmons Street in order to serve the subdivision. The extension of the water main is considered private and is not owned or maintained by CBS. Tisher has also received approval of a platting variance to add one additional lot to the system, as he is in the process of subdividing Lot 1, JPJL into two lots. This is how eight lots have been approved to connect to the system. Given the limited nature of the development intended, the land’s unsuitability as a major subdivision, and the fact that it was under the purview of a single developer, city staff recommended approval of the platting variances.

ANALYSIS

Operational and Service Considerations

In regard to the sewer system, application states that, “The system is engineered and sized in accordance with City of Sitka standards.” While the 8” line size is typical for many major subdivisions (though appropriate line size is determined on a case-by-case basis based on the loading), the system was not reviewed or permitted in accordance with other aspects of design that would be required as city standard, particularly its location. This is why the city has not, and does not plan to, adopt this system as city infrastructure. There are significant operational/service concerns about expanding use of this system. The concerns from CBS Engineering include:

- Access to the system for maintenance/repairs is challenging due to the topography. The system is installed on steep grade, and there are few developed access points. Especially once the subdivision is fully developed with homes, fences, yard accessories, etc., getting physical access to this line will be difficult, and opportunities for access with heavy equipment are highly vulnerable to weather conditions. With repairs being challenging, careful consideration should be taken in adding additional strain to the system.
- Increased risk of inflow (when rainwater is misdirected into sanitary sewer systems) and infiltration (ground water seeping into sanitary systems), otherwise referred to as I&I. I&I can directly impact the operation of gravity mains, force mains, and treatment plant operations.
- Capacity analysis and an assessment of the potential impacts on existing owners/users of the system was not provided.

At the last review on August 3rd, the applicant provided a letter from CBS to the DEC dated June 24, 2021 regarding this sewer line installation. The letter stated support from the CBS Environmental Superintendent for the connection. This preliminary approval is a standard review that often takes place between DEC and CBS – DEC wants to ensure that CBS infrastructure has the capacity to handle an additional connection, and that the main will not be adversely affected by a proposed connection. It is notable that the request submitted with the DEC permit did not define the number of lots that would utilize this connection, it only showed one lot (all of the unsubdivided Lot 3, West Woodbury Subdivision). On these bases alone, the Water/Wastewater Division within Public Works did not, and does not, oppose the connection. However, with the totality of factors now defined in this request, recommendation for denial in this case is supported unanimously by involved staff across Planning, Public Works, and Legal.

Notably, DEC approval does not preempt, preclude, or predetermine subsequent review processes such as this platting variance or future utility connection permits. While we were not provided a copy of the approval letter between DEC and the applicant, most standard approval letters from DEC specifically state that their approval is contingent on all other federal, state, and local approval procedures. It is the Planning Commission’s role to weigh many of the non-technical aspects of such decisions regarding land development such as resident quality of life, neighborhood impacts, and future growth potential – those factors still must be considered and weighed.

Management

Currently, maintenance of this system is the responsibility of Mr. Tisher and the property owners who have since purchased lots in the Tisher Subdivision. Based on staff experience in neighborhoods served by private access and/or utility systems, maintenance of private systems can

often be complex and contentious. Adding an additional developer and property owners to the system greatly increases the complexity of management. This poses risk to current/future property owners including:

- Inadequate maintenance due to dispersed responsibility and lack of consensus
- Inequal financial contributions towards necessary repairs
- Neighborhood disharmony

Current and future resident quality of life and cost of living impacts should factor heavily in this decision. There is good reason that generally, private utilities are not allowed to be expanded across a wide number of residential owners (as evidenced by our code provision that no more than 4 lots shall be served by private utility easements). Private utilities are expensive and complex to manage, and can result in significant out-of-pocket costs for property owners both in terms of maintenance and inspection and in the case of failure. These expenses are on top of the standard utility rates they must also pay to CBS for the ultimate connection to the public main. Poorly maintained private infrastructure such as roads or utilities can also negatively impact property/resale values. The enforcement mechanism for non-payment or non-cooperation by a participating property owner in the case of a maintenance agreement is private legal action which can be lengthy and expensive. While it may be more costly upfront to connect to public infrastructure, it is more manageable and cost effective in the long run.

Therefore, best practice is to keep private lines to a minimum; it is well proven that utilities are best managed by an overall utility responsible for the total system with the necessary staff and equipment. These properties are well situated to connect to public infrastructure given that they all front a municipal right-of-way.

CBS involvement in private systems: When a private utility system fails, particularly those that involve raw sewage or other key utility service like water, it can have a drastic impact to the private residences on the system and/or neighboring properties.

While the system is private and is the responsibility of property owners to maintain, in the event of a significant event when time is of the essence, property owners will quickly become overwhelmed trying to respond. Naturally, residents will look to their local government for help and intervention in these cases. There is a risk (especially in the case of urgent/catastrophic failures) that the inability of a large group of homeowners to organize and mobilize will result in pressure for CBS to complete repairs at the expense of ratepayers, and/or adopt the line as city infrastructure. This is particularly true as private infrastructure ages, and original developers/owners are no longer actively involved in the neighborhood.

If the situation is severe enough, both CBS and state agencies will have mandatory regulatory roles to protect the public and will have to respond in an emergency manner. Per the Uniform Plumbing Code, in the event of a failed sewer service that allows waste to discharge in a manner that is not approved, any and all structures discharging said waste can be considered “Dangerous Buildings” and can be ordered to vacate until appropriate repairs have been performed, inspected, and approved. Sometimes, reaching the point of “order to vacate” can be the only immediate, de facto enforcement mechanism for a maintenance agreement which is an extremely time intensive, costly, and negative experience for CBS and residents alike.

Future Growth

The resultant Lot 3 of the proposed subdivision is 40,375 square feet. With a minimum lot size of 6,000 square feet in the R-1 district, it is feasible that this lot could be subdivided again, potentially as a hybrid minor subdivision that could result in five lots. With Lot 4 being even larger at 219,991 square feet, there is the potential for continual minor subdivision and platting variance requests. While each of those requests would come back before the Commission for approval, it is worth considering whether this approach best serves an important purpose of the subdivision code, “To facilitate the orderly and efficient layout and use of the land in light of the constantly changing conditions.”

STAFF RECOMMENDATION

Staff recommends denial of the platting variance for the following reasons:

1. The system was designed and permitted as a private system to serve a small number of lots. The risk to existing users of the system is unknown and unquantified.
2. Management of a private utility system between this many property owners carries significant risk for the current/future property owners as well CBS. Staff does not believe that long-term resident quality of life or cost of living are well served by the granting of this variance.
3. The growth potential for further development of these lands needs to be factored in. If future, additional subdivision of the resultant Lots 3 or 4 is desired by the applicant, it would be both more orderly and more efficient at this point to plan and invest in infrastructure that can appropriately serve both this subdivision and subsequent subdivisions with utilities.
4. Approval of this platting variance sets a worrying precedent that encourages circumvention of the major subdivision process. This is a unique situation given that eight lots have already been approved to use the system. Generally, the Planning Department supports creative solutions to Sitka’s development challenges which is why previous applications have been recommended for approval. However, an important differentiator in those cases was that the land in question was under the control of a single developer, and it was not seen as suitable for a major subdivision due to its size and topography. To allow continual minor subdivisions involving the expansion and tapping of private systems by subsequent developers is antithetical to the purpose of the subdivision code, particularly its goal “To assure adequate and properly placed utilities.”
5. The applicant has not met their burden of proof that the variance is warranted. Variances may not be granted solely to relieve financial hardship or inconvenience; the justification provided in the applicant materials is that, “This variance will allow future property owners to have gravity sewer and eliminate the need for a sanitary sewer pump.”

However, if the Commission is inclined to approve the platting variance, staff has prepared a list of recommended conditions that should be attached to the approval.

RECOMMENDED MOTIONS

I move to approve the platting variance to serve more than four lots (eleven lots) with a private utility easement for a subdivision of 300 Kramer Avenue in the R-1 single family and duplex residential district subject to the attached conditions of approval. The property is also known as Lot 3, West Woodbury Subdivision. The request is filed by Todd Fleming. The owner of record is Sound Development, LLC.

Conditions of Approval:

1. A capacity analysis of the private sewer system that addresses risks and impacts resulting from the addition of more lots/users to all property owners in the Tisher Subdivision and JPJL Subdivision must be prepared by a licensed, professional engineer and approved by the municipal engineer.
2. A master agreement governing the maintenance of the sewer system shall be developed with the agreement of all property owners in the Tisher Subdivision and JPJL Subdivision. The agreement must include every owner's receipt, acknowledgement, and acceptance of the report resulting from Condition #1. The agreement shall run with the properties into perpetuity, binding all future property owners. The agreement shall be submitted to the Planning Department for approval prior to recording. The agreement shall be recorded and noted in a plat note prior to submission of the final plat to the Planning Commission.
3. Final plat approval shall not be given unless these conditions are met.

Findings for Denial (Recommended):

I move to find:

- **That the granting of the platting variance will be injurious to adjacent properties due to the operational and financial risks of expanding the private sewer system; and**
- **That the granting of the platting variance will be detrimental to the public safety and welfare by compromising the purpose and intent of the subdivision code and negatively impact the municipality's ability to ensure adequate and properly placed utilities; and**
- **That the applicant has not met their burden to prove that the tract to be subdivided is of such unusual size and shape or topographical conditions that the strict application of the requirements of this title will result in undue and substantial hardship to the owner of the property.**

Findings for Approval:

I move to adopt the required findings for platting variances as listed in the staff report.

SGC 21.48.010 Requirements for Platting Variances

A variance from the requirements of this title may be granted only if the planning commission finds that:

- A. The granting of the platting variance will not be detrimental to the public safety, or welfare, or injurious to adjacent property.
- B. The tract to be subdivided is of such unusual size and shape or topographical conditions that the strict application of the requirements of this title will result in undue and substantial hardship to the owner of the property.

Attachments:

Attachment A: Aerial

Attachment B: Preliminary Plat

Attachment C: Neighboring Subdivision Plats

Attachment D: CBS Letter to DEC dated June 24, 2021

Attachment E: Photos

Attachment F: Applicant Materials