



## AGENDA MEMORANDUM

Planning Commission Meeting of September 5, 2018

**DATE:** August 31, 2018

**TO:** Nina Nixon-Méndez, Director of Development Services

**FROM:** Greg Collins, Senior City Planner, Development Services  
gregc@cctexas.com  
(361) 826-3535

### **Sandy Creek Townhomes**

Request for a Waiver of Street Design Standards for Private Streets, Curb and Gutter and Sidewalk in Sections 8.1.4, 8.2.1.J, and 8.2.2 of the Unified Development Code (UDC)

### **BACKGROUND:**

Miguel Saldana, on behalf of the landowner/developer, submitted a request for a waiver of street design standards for private streets, curb and gutter, and sidewalk, in Sections 8.2.1.J, 8.2.1.1, 8.1.4, and 8.2.2 of the Unified Development Code (UDC).

The subject property, known as Sandy Creek Townhomes replat, is located on the south side of Holly Road, between Rodd Field Road and Lexington Drive. The land is zoned Townhouse RS-TH. The prior plat, recorded on February 2, 2018, was for one lot, one block. Townhouse dwelling units originally were to be sold as condominiums.

After complete infrastructure construction, recordation of the plat, and commencing construction of the townhome buildings, the developer learned from his lender that the lender wanted the land underneath the dwelling units to be individually-owned, enabling the land to be utilized as collateral. Developer then applied for a replat, to change the plat from one lot, one block, to a 67-lot townhouse subdivision, with one common area lot for private access easement and private streets. Improvements, including street, water, sewer, storm sewer, and utility connections, are *already built*, however, they were built under the standards of a one lot, one block plat.

When this development was platted as one lot, one block, and the townhouse units were to be sold as condominiums, without the land underneath, the internal transportation circulation was considered private drive aisle, in the same manner as an apartment or condominium complex. However, when platting the land so that the townhouse units are on individually platted lots, the status of the internal transportation circulation ***changes from being private drive aisle, to being public or private street between separate lots***, which triggers the design standards of UDC 8.1.4 (streets, curb and gutter, sidewalks), 8.2.1.1 (street design standards including 30-year life), 8.2.1.J (private streets shall be built to public standard), and 8.2.2 (sidewalks).

To remedy any discrepancies between the already-built improvements, built when this plat was

one lot, one block, and what is now required, under a multi-lot subdivision, applicant now requests these plat waivers. The streets in this replat are to be private streets, within private access easement, and not public.

### **STAFF ANALYSIS / FINDINGS:**

Section 8.1.4 of the UDC requires that during the platting process the “developer shall provide ... Streets, including but not limited to ... curb and gutter” and “sidewalks.” (UDC Section 8.1.4.A.).

Section 8.2.1.J.5 states that the design standards for private streets shall be the same as required for public streets.

Section 8.2.1 states that streets shall be designed in accordance with the Comprehensive Plan, applicable area development and master plans, Mobility Plan, and the Design Standards. Section 8.2.1.1 states that streets shall be designed for a 30-year life.

Section 8.2.2.A.1. requires sidewalks.

The streets in this replat are to be private streets, within private access easement, and not public streets. Regardless, per UDC 8.2.1.J, the streets shall be built to public standard. The applicant in his letter requests plat waivers from these requirements for the following reasons.

- The concrete pavement for the private street will have a 30-year life
- It is designed to withstand the weight of fire trucks and solid waste trucks
- The subdivision will be gated which will reduce traffic. Fire truck traffic will be infrequent
- The street is inverted, meaning stormwater is directed to the center of the roadway, to inlet, rather than away from the center, so curb and gutter is not needed.

City staff, including Development Services engineer, have reviewed the waiver request for the street design standards and find that the waiver, *except for sidewalk*, is justified. The streets are private, and will not be dedicated to the City, and are the maintenance responsibility of the homeowners' association. The alternative, removing the existing infrastructure and replacing it to City standard would render the subdivision of the land infeasible, per **UDC 3.8.3.D.**<sup>1</sup>

**Sidewalks.** Regarding waiver from sidewalk construction, the applicant's statements, based on the standards for granting a waiver under **UDC 3.8.3.D**, and Staff's response, are shown below.

- **3.8.3.D.1.** Waiver not detrimental to public health, safety, general welfare or injurious to other property; townhome is gated; only residents and guests will be within the

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<sup>1</sup> The need for a waiver shall be demonstrated to the Planning Commission's satisfaction. The waiver may be approved, approved with conditions, or denied after consideration of the following factors:

1. The granting of the waiver shall not be detrimental to the public health, safety or general welfare, or be injurious to other property in the area, or to the City in administering this Unified Code;
2. The conditions that create the need for the waiver shall not generally apply to other property in the vicinity;
3. Application of a provision of this Unified Development Code will render subdivision of land unfeasible; or
4. The granting of the waiver would not substantially conflict with the Comprehensive Plan and the purposes of this Unified Development Code.

(UDC 3.8.3.D.1-4).

development

- Staff response: 67 lots in the subdivision; residents would use sidewalks
- **3.8.3.D.2.** Conditions creating need for waiver may not generally apply to other properties in the area: (a) typical single-family subdivisions w/ public streets, allow all types of vehicles. (b) Gated community will limit vehicular access. (c) Other townhome developments have been allowed to develop without sidewalks.
- Staff response: (a) all types of vehicles will be allowed in the subdivision. (b) residents will enter and exit the gated community same as other subdivisions (c) Other townhome developments, such as Aruba PUD are designed to have sidewalks
- **3.8.3.D.3.** May not render development unfeasible, but will burden the developer with additional costs that other townhome developments did not have to bear
  - Staff response: Other townhome developments are required to build sidewalks.
- Sidewalk issue did not come up until developer was told by his financiers that that each unit had to be sold with the land underneath. No change in number of buildings or units. Configuration has not changed. Only change is that the developer is platting separate lots for each unit.
  - Staff Response: Changing from **one lot, one block**, (with units being either sold as condominiums or rented as apartments), to multiple lots, changes the internal circulation from **private drive aisles** to **streets**. Streets, whether public or private, are subject to the standards in UDC 8.1.4.A, which expressly includes sidewalks. Staff was not aware of Developer's need to have separate land lots (and thus, streets and sidewalks) until after recordation of the original 1 lot plat, after financiers informed developer of need for separate lots.
- **3.8.3.D.4.** The granting of the waiver will not conflict with the Comp Plan and the purposes of the UDC
  - Staff Response: Plan CC calls for "connected networks of good streets and sidewalks" (pages 14, 31, 40). Community input calls for "healthier" city (page 20). Also, the UDC Sidewalk exceptions in 8.2.2.B. do not apply here.
  - Adding sidewalk at this time would require the developer to go back and relocate all the connections out of the required sidewalk location. Even if the sidewalks are required, the sidewalks will practically be unusable because the car from the townhome unit not in the garage will be blocking the sidewalk.
    - Staff Response: This has been resolved by applicant's engineer narrowing the private access easement containing the private street and sidewalk to 34 feet, from 50 feet. See PowerPoint slides. Connections do not appear to be affected by sidewalk. Sidewalk will be allowed over any utilities.

#### **Sidewalk Exceptions Not Met: UDC 8.2.2.B**

Staff finds that the applicant does not fit within any of the circumstances for an exception and

waiver from sidewalk improvements in UDC 8.2.2.B:

**UDC 8.2.2: “B. Exceptions for Required Sidewalk Improvements**

A waiver may be granted in accordance with 3.8.3.D and only when the following conditions are satisfied:

1. Sidewalks shall not be required along each side of a street right-of-way where such street is a permanent dead-end street and where there is pedestrian access from the permanent dead-end street to a paved hike and bike trail. In such instance, a sidewalk only shall be required on one side of the street right-of-way.
2. Sidewalks shall not be required along street rights-of-way where each lot fronting on such street has direct access from the side or rear to a paved hike and bike trail.
3. Sidewalks shall not be required for residential subdivisions in the Farm-Rural and Residential Estate zoning districts.
4. Sidewalks adjacent to private streets may be allowed to be placed on only one side of the street if the sidewalk width is 6 feet or greater and approved by the Assistant City Manager of Development Services.”

**STAFF RECOMMENDATION / ASSESSMENT:**

Staff recommends approval for the waiver from the street design standards, except for sidewalk.

Staff recommends denial of the waiver from the sidewalk construction requirement.

**LIST OF SUPPORTING DOCUMENTS:**

Exhibit A –Sandy Creek Townhomes Replat, 67-lots (current application)

Exhibit B – Utility Plan with current application

Exhibit C –Sandy Creek Townhomes Final Plat, One-Lot, One-Block, Vol. 68, P. 948-949 (recorded February 2, 2018)

Exhibit D – Waiver Letter Request: Sidewalks

Exhibit E – Waiver Letter Request: Street Design Standards

PowerPoint Presentation