



CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **December 29, 2020**
Project: **Hickory Meadows**
Planner: Courtney McNair, Garver

AGENDA ITEM

A (2)

WAIVER REQUESTS

Address: 865 Klenc Road

Parcel #: 830-37759-000

SUMMARY: Hickory Meadows is requesting Planning Unit Development (PUD) and Preliminary Subdivision Plat approval for 300 lots (296 buildable) on 80 acres of land. Additionally, two (2) Variances, and five (5) Waivers are needed with this proposed development.

CURRENT ZONING: R-3 - Single-Family Residential - 9,600 square foot minimum lot size; provided density shall not exceed three units/net acres (after dedications are made).

PROPOSED ZONING: PUD- Planned Unit Development for a single-family residential subdivision with a density of 4.95 units/acre

CITY WARD: 3- Don Doudna & Tim Burress

FLOODPLAIN: No

INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):

Water: Tontitown Water

Electric: Ozarks Electric

Sewer/Septic: Tontitown Sewer (connection to lift station)

Phone: AT&T

Natural Gas: Black Hills Energy

Cable: Cox Communications

School District: Springdale

PROJECT SYNOPSIS:

The owner of this property is Solomon Properties, and the applicant is Ron Homeyer of Civil Engineering, Inc. The property is located on Klenc Road, and will tie into the South Pointe Phase 3, 4, & 5 project that was recently approved, with the extension of Wildcat Creek Blvd. along the southern property line.

This project was initially submitted in September 2020 but was tabled due to not meeting the greenspace requirements of the Planned Unit Development (PUD) Code. That code was amended and now this project should now be able to conform with the requirements for a PUD.

The applicant is showing 3% Common Open Space, and 41.9 % Green Space and Lawn Space. The total proposed density is 4.95 residential lots per acre.

Wildcat Creek Blvd. is classified as a Collector Street on the Master Street Plan, which requires 70' of Right-of-Way, and a six foot (6') sidewalk and twelve foot (12') trail, and seven (7') of green space separation on both the sidewalk and trail side of the street. This was discussed at the September 22, 2020 Meeting during the project review for the South Pointe Phases 3, 4, & 5.

A waiver was approved at that time to allow Wildcat Creek Blvd. to be constructed to the Local Street section. It shall have a ROW of 50' with a 100' turn lane at the intersection with Klenc Road, per the agreement reached at that meeting. Local street sections are required to have a minimum 50' ROW, five (5) foot wide sidewalks with five (5) feet of green space on both sides of the street. *Section 90.400.4 & 90.900.2.*

The waivers requested by the applicant are that no sidewalk be required on the north side of Wildcat Creek Blvd., the sidewalk on Klenc Road be reduced from six feet (6') to five feet (5') in width, curve radius on local roads to be reduced to 75' from 150', and that the Local Streets interior to the subdivision have a 45' ROW, with four foot (4') green space, and four foot (4') sidewalks. Additionally, staff discovered that the greenspace proposed on the south side of Wildcat Creek Blvd. does not meet the Local Street standards as it is only shown as four feet (4') wide. If the applicant would like to request this reduction, an additional waiver is needed.

152.026 WAIVERS.

(A) *General.*

(1) *When, by the **strict interpretation of these regulations, an applicant incurs undue restrictions on the physical property to be subdivided,** a waiver for such requirements may be granted by the Planning Commission.*

(2) ***Under no circumstance should a waiver be granted because of a personal hardship or for personal or emotional reasons. Waivers shall not be granted based strictly on financial hardship.***

(3) *A waiver is determined by the strict interpretation and enforcement of the rules and regulations upon a given piece of property to be subdivided.*

(B) *Procedures.*

(1) *No waiver shall be granted except upon written petition by the applicant when the application is filed. The petition shall state fully the grounds for the waiver and all the facts upon which the petition is made.*

(2) *In granting the waiver, the Planning Commission shall prescribe any conditions that it deems necessary to or desirable in the public interest.*

(3) *In considering the petition for a waiver, the Planning Commission shall take into account the **nature of the proposed use of land involved, existing uses of land in the area, proximity to public utilities, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such waiver upon traffic conditions and upon the public health, safety and general welfare in the vicinity.***

(4) *The findings of the Planning Commission, together with the specific facts upon which findings are based, shall be incorporated into the official minutes of the Planning Commission meetings at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of these regulations.*

WAIVER #1:

No sidewalk on the north side of Wildcat Creek Blvd. The applicant states that there is only eleven (11) feet of ROW on the north side of Wildcat Creek Blvd., and therefore they cannot place a sidewalk on this side of the street.

Section 152.026 Waivers (B)

(5) No waiver shall be granted unless the Planning Commission finds all of the following:

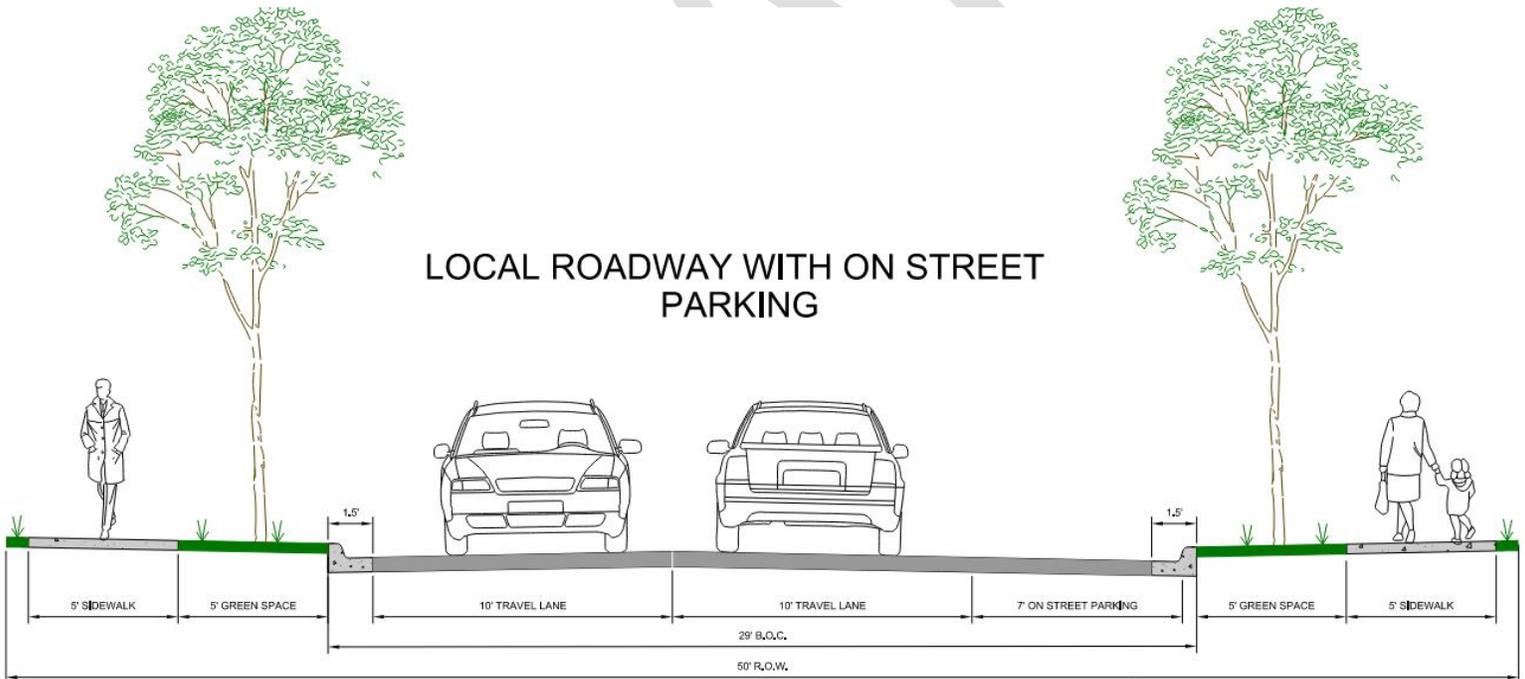
- (a) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.

Staff's Response: Staff finds no special circumstances that would deprive this applicant of any reasonable use of land.

Based on the approved Typical Street Sections for Local Streets, there is a 50' ROW, up to a 29' back of curb to back of curb road width, and five (5) foot sidewalk with five (5) foot green space on both sides.

This is $50' - 29' = 21'$ remaining / 2 = 10.5 feet on both sides for the green space and sidewalk.

The eleven (11) feet of ROW is more than adequate for a minimum five (5) foot green space, and minimum five (5) foot sidewalk on the north side of Wildcat Creek Blvd.



- (b) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff's Response: The waiver is not necessary for the preservation of a substantial property right of the applicant.

(c) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

Staff's Response: The requested waiver to have no sidewalk on the north side of Wildcat Creek Blvd. has the potential to impact the residence of the 296 proposed lots within the Hickory Meadows Subdivision, as well as future connections for the pedestrians as more road connections are completed.

(d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

Staff's Response: This waiver would absolutely affect future development as there would be a gap in pedestrian infrastructure.

STAFF RECOMMENDATION:

Staff understands there may be concern from the applicant that the remaining one (1) foot of space between the sidewalk and the proposed fence will cause a maintenance issue. It is staff's recommendation that the developer provide six (6) feet of greenspace and place the required five (5) foot sidewalk directly adjacent to the proposed fence. This will allow more space for the street trees as well as keep the pedestrian infrastructure intact.

Staff recommends DENIAL of Waiver #1 to eliminate the sidewalk on the north side of Wildcat Creek Blvd.

WAIVER #2:

Sidewalk on Klenc Road reduced to five (5) feet wide rather than six (6) feet wide.

Section 152.026 Waivers (B)

(5) No waiver shall be granted unless the Planning Commission finds all of the following:

- (a) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.

Staff's Response: The applicant plans to pay a fee in lieu of constructing required improvements along Klenc Road. Due to this, the street will not be improved, and will not have curb and guttering installed. This means that the drainage ditch running along the west side of the subject property will remain. This leaves limited space for sidewalk improvements.

- (b) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff's Response: While the applicant could shift their fencing to the west in order to allow the six (6) foot wide sidewalk, it would be asking more than is normal. The applicant is dedicating all of the ROW they are required to dedicate along Klenc Road, and it would be impactful to ask that they dedicate more than the required ROW.

- (c) That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.

Staff's Response: A five (5) foot wide sidewalk provides ADA compliant pedestrian access. This waiver will not be detrimental to public health and safety.

- (d) That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.

Staff's Response: While it is unfortunate that the entire width of the required sidewalk cannot be built, as sidewalks are joined to the north and south, transitions can be made. This waiver will not prevent the orderly development of other lands.

STAFF RECOMMENDATION:

Staff recommends APPROVAL of Waiver #2 to reduce the required sidewalk from six (6) feet wide to five (5) feet wide along the west side of Klenc Road due to the existing ditch that will not be upgraded along Klenc Road.

WAIVER #3:

Radius measurements on lots to be 75' instead of 150'

Section 152.026 Waivers (B)

(5) No waiver shall be granted unless the Planning Commission finds all of the following:

- (a) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

Staff's Response: This radius was allowed in the recently approved South Pointe Subdivision, Phases 3, 4, &5, and is typical of several other subdivisions in the City of Tontitown. The City Engineer has no concerns about allowing this smaller radius and stated previously that it can help encourage reduced speeds on interior subdivision streets.

- (b) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

Staff's Response: As it has been allowed in the past, and does not have a detrimental effect, to require the full 150' radius would impact the design of this development.

- (c) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

Staff's Response: The reduction of the radius may encourage reduced traffic speeds, and therefore, could be a positive impact on public health and safety.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

Staff's Response: The granting of this waiver will not prevent orderly development of adjacent lands.

STAFF RECOMMENDATION:

Staff recommends APPROVAL of Waiver #3 to reduce the curve radius from 150' to 75' feet.

WAIVER #4:

Local Streets interior to the subdivision to have 45' ROW, four (4) foot wide sidewalks, and four (4) foot wide green space on each side of the street.

This request is really a three-part request:

1. Reduction of the interior streets' ROW from 50 feet to 45 feet.
2. Reduction of the interior streets' sidewalks from five (5) feet to four (4) feet.
3. Reduction of the interior streets' greenspace from five (5) feet to four (4) feet.

Section 152.026 Waivers (B)

- (5) *No waiver shall be granted unless the Planning Commission finds all of the following:*
- (a) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

Staff's Response: All other similar developments must provide a 50' ROW for local roads with a five (5) foot wide sidewalk and five (5) feet of greenspace. There are no special circumstances affecting the land.

- (b) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

Staff's Response: All other similar residential developments must provide the 50' of ROW. This waiver is not necessary for the applicant's property rights.

- (c) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

Staff's Response: The reduction of the ROW, and the subsequent reduction of the sidewalk width and greenspace does have the potential to impact public safety. A four (4) foot wide sidewalk does not meet ADA requirements, and the requested four (4) feet of greenspace reduces the space between pedestrian and vehicular traffic.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

Staff's Response: This waiver is unlikely to prevent the orderly subdivision of other land in the area.

STAFF RECOMMENDATION:

Staff recommends DENIAL of Waiver #4 to reduce the interior Local Streets ROW from 50 to 45, reduce the sidewalks from five (5) feet to four (4) feet, and reduce the greenspace from five (5) feet to four (4) feet.

As a compromise, staff would accept a 47-foot ROW, with a 27' wide road (from back of curb, to back of curb) with five (5) feet of greenspace and five (5) foot wide sidewalks on both sides of the road. The sidewalk will need to be placed at the edge of the ROW. This will allow the sidewalks to be ADA compliant and give more of a buffer for pedestrians from vehicular traffic.

Previously, four (4) foot wide sidewalks were allowed in another development in Tontitown, and this caused issues. In order to comply with ADA requirements, the developer had to retroactively add areas where the sidewalks were expanded to five (5) feet wide for passing areas. This is not good design and is not something that should be continued. A minimum five (5) foot wide sidewalk should always be utilized.

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WAIVER #5:

Green space on south side of Wildcat Creek Blvd. reduced to four (4) feet rather than the required five (5) feet.

Section 152.026 Waivers (B)

(5) No waiver shall be granted unless the Planning Commission finds all of the following:

- (a) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.

Staff's Response: As no reasoning was given for this greenspace area to be reduced, it is unclear if there is a special circumstance causing the need for this waiver.

- (b) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff's Response: It is unclear if this waiver is necessary.

- (c) That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.

Staff's Response: Four (4) feet of greenspace may potentially be detrimental to public safety. Wildcat Creek Blvd. is being constructed as a Local Street section at this location, it is a Collector Road and will eventually provide important connections and have more vehicular traffic that travels on this street. The more separation between pedestrian traffic and vehicular traffic, the better. Additionally, there is a variance request to remove the street tree requirement in this area. Street trees also create an extra buffer, and if this street tree requirement is being varied, the impact of reducing the greenspace is more impactful.

- (d) That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.

Staff's Response: This waiver is unlikely to prevent the orderly subdivision of other land in the area.

STAFF RECOMMENDATION:

Staff recommends DENIAL of Waiver #5 to reduce the greenspace from five (5) feet to four (4) feet on the south side of Wildcat Creek Blvd.