

NAME: Rebick Accessory Dwelling – Conditional Use Permit
Waiver of Right-of-Way Dedication

LOCATION: #1 Mallard Pointe Cove

OWNER/APPLICANT: Michael and Mary Jane Rebick/Brad Ewing

PROPOSAL: The applicant is requesting a waiver of the right-of-way dedication for the Edswood Road Extension that was required in conjunction with the Commission's March 10, 2016 approval of a conditional use permit to allow an accessory dwelling.

1. SITE LOCATION:

The property is located at the south end of Edswood Road, south of Kanis Road. The property is located outside of the city limits but within the City's zoning jurisdiction.

2. PUBLIC WORKS COMMENTS:

1. The Edswood Road Extension is classified on the Master Street Plan as a future principal arterial. Dedication of right-of-way as shown on the Rahling Road Alignment Plan which crosses this property for future construction. This alignment of the extension of Edswood Road, a southern extension of Rahling Road, that continues south to Interstate 30 was located by engineering staff using existing parcel lines, right-of-ways, and elevation contours in 2011 following the approval of the Hagan Addition Preliminary Plat located on the west side of Edswood Road.

3. UTILITY, FIRE DEPT. AND CATA COMMENTS (from Previous C.U.P.):

Little Rock Wastewater: Outside service boundary – No comment.

Entergy: Entergy does not object to this proposal. There are no conflicts with existing Entergy facilities as there are no electrical lines in the vicinity of the proposed building. Service is currently being provided to the existing house via an underground service. Contact Entergy in advance to determine electrical service requirements and facilities locations due to this guest house construction.

Centerpoint Energy: No comment received.

AT&T: No comment received.

Central Arkansas Water: No objection.

Fire Department: West Pulaski Fire Protection: No objection on previous C.U.P. request.

Building Codes: No comment.

County Planning: Septic approval by the Health Department must be provided before a 911 address is issued.

Rock Region METRO: METRO does not service this area.

SUBDIVISION COMMITTEE COMMENT:

(MAY 11, 2016)

Brad Ewing was present representing the application. He stated the property owner did not want to dedicate the right-of-way that was required in conjunction with the March 10, 2016 conditional use permit approval. He said there was no timeline for building the road and the Master Street plan was subject to change. He presented a petition signed by several residents of Edswood Court supporting the applicant's position.

Vince Floriani, of Public Works, presented maps and aerial photographs showing the proposed alignment of the road. He stated the alignment was located by engineering staff in conjunction with the review and approval of the Hagan Addition Preliminary Plat located on the west side of Edswood Road in 2011. He stated at least two months of study went into establishing the alignment.

The applicant was advised to be prepared to present his position before the full Commission.

STAFF ANALYSIS:

On March 10, 2016, the Commission approved a conditional use permit to allow for construction of an accessory dwelling on the R-2 zoned, 5± acre tract located at #1 Mallard Pointe Cove.

One of the conditions of approval was compliance with the following Public Works Department comment:

1. The Edswood Road extension is classified on the Master Street Plan as a principal arterial. Dedication of right-of-way to 55 feet from centerline will be required.

The applicant is now requesting that the right-of-way dedication requirement be waived. His contention is that no timeline has been established for construction of the road and the Master Street Plan is subject to change. He is asking that the dedication requirement be waived and instead be negotiated at a future date.

Staff is not supportive of the requested waiver. Section 1A of the City's Master Street Plan "Authority, Jurisdiction and Enforcement" begins as follows:

Any subdivider of land or applicant for rezoning, variance, conditional use permit, site plan or a building permit (herein referred to as applicant) review within the official planning area of the City shall conform to the Plan by indicating on any plats, drawings or surveys submitted to the city for its review, any street identified in the Plan which traverses or abuts the said property. Applicants for site plan review and building permit are not required to dedicate or construct any bicycle path or route as described in the Plan.

Where the said property abuts a street included in the Plan, the property owner shall dedicate one half of the required right-of-way as established in the Plan.

At the time of filing a C.U.P. application, the applicant is made aware that there may be a requirement to dedicate additional right-of-way. The applicant is asked to sign (3 places) a form titled "Street Right-of-Way Dedication Agreement". The form does not dedicate any property but it provides the applicant an opportunity to either agree or disagree to the dedication requirement. If the applicant disagrees, the Commission is made aware and the waiver can be considered at the time of review of the C.U.P. application. In this case, the property owner signed the form and indicated agreement to dedicate any needed right-of-way as required by the Master Street Plan. The decision to not dedicate the right-of-way was not made until after the Commission approved the C.U.P.

As to the applicant's statement alluding to the uncertainty of the alignment of the street, Public Works Engineering staff spent at least two months studying the issue in conjunction with a proposed preliminary plat located just north of this site, on the west side of Edswood Road. Public Works Comment is as follows:

1. The Edswood Road Extension is classified on the Master Street Plan as a future principal arterial: Dedication of right-of-way as shown on the Rahling Road Alignment Plan which crosses this property for future construction. This alignment of the extension of Edswood Road, a southern extension of Rahling Road, that continues south to Interstate 30 was located by engineering staff using existing parcel lines, right-of-

ways, and elevation contours in 2011 following the approval of the Hagan Addition Preliminary Plat located on the west side of Edswood Road.

STAFF RECOMMENDATION:

Staff recommends denial of the right-of-way dedication waiver request.

PLANNING COMMISSION ACTION:

(JUNE 2, 2016)

The applicant was present. There were several persons present in support of the applicant's waiver request. A petition of support from several neighbors had been received by staff and forwarded to the commissioners.

Dana Carney, of the planning staff, presented the item, gave the background on the current issue and a staff recommendation of denial of the R-O-W dedication waiver. Mike Hood, of public works staff, presented sketches, aerial photographs and the master street plan indicating the proposed West Loop. He stated it had been planned for many years. Mr. Hood stated the master street plan places the responsibility for determining the specific alignment of the road on engineering staff. Mr. Hood stated staff had carefully studied this alignment at the time the Hagen Subdivision preliminary plat was being reviewed, just to the north of this site. He said staff tried to align the right-of-way with property lines to reduce the impact on any one property owner. Mr. Hood noted the applicant was not being asked to make the street improvements.

Michael Rebick, the applicant, addressed the commission. He stated he did not intent to create a "big deal", that all he wanted was to build an efficiency apartment for guests and family members. He said he was made aware of the master street plan at the time he closed on his property about 10 years ago. He handed out and read from the letter of support from his neighbors. Mr. Rebick stated he was not going to dedicate the right-of-way, regardless of what the planning commission decided. He said he would forgo building the accessory dwelling, if necessary. He referred to a copy of the preliminary plat for Hagen's Subdivision and stated it appeared the proposed right-of-way alignment had moved. He said he was willing to discuss the matter at some point in time but he did not want the dedication requirement to be tied to his proposed accessory dwelling.

Scott Minton, of 15 Edswood Court, spoke in support of the waiver request and asked the commission to separate the CUP and the R-O-W dedication.

Evelyn Curtis, of 3 Edswood Court, said Mr. Rebick should be permitted to build what he wants and the R-O-W alignment should be discussed at a later date.

Johnny Pattillo, of 14 Edswood Court, said Mr. Rebick should have the right to build his garage. He spoke against the extension of Edswood.

Vanessa Gilliam, of 10 Edswood Court, spoke in support of Mr. Rebick. Harry Morton, of 6024 Longwood, said he had not been aware of the alignment of the Edswood extension. He questioned the process of determining the alignment.

In response to a question from Commissioner Latture, Mike Hood stated the alignment of the road has not changed. He said the alignment indicated on the copy of the Hagen's plat presented by Mr. Rebick did not show the alignment as it crossed his property.

In response to a question from Commissioner Cox, Mr. Hood stated the alignment of the road was indicated on the master street plan prior to Hagen's plat being reviewed and the detailed alignment was set at the time of that that review.

Commissioner Latture asked if the applicant was being asked to donate the required R-O-W. Mr. Hood responded that he was. Commissioner Latture asked if others had been asked to dedicate R-O-W for the street. Mr. Hood responded that the developer of Hagen's Subdivision had done so.

Commissioner Latture asked if the City would have to buy the R-O-W at some point if Mr. Rebick did not make the dedication. Deputy City Attorney Shawn Overton responded affirmatively.

Vice-Chair Berry commented that the master street plan was a public document and the process of adopting the plan and any changes was appropriate. He then made a motion to approve the waiver request. The vote was 5 ayes, 5 noes and 1 absent. The request failed.