

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, Scott and Taylor Ames and Kirk and Rebecca Pennings, File # 21-277-255, have applied for an appeal of a lot split approval by the planning administrator under the provisions of § 61.701(c) of the Saint Paul Legislative Code, on property located at 1945 Rome Avenue, Parcel Identification Number (PIN) 16.28.23.23.0126, legally described as Lots 7 & 8, Block 2; Highview Addition; and

WHEREAS, the Zoning Committee of the Saint Paul Planning Commission, on July 15, 2021, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. Zoning Code § 69.304 states that lot splits and adjustments of common boundaries are permitted without platting, provided the following conditions are met:
 - (1) The lot or lots have frontage on an existing improved street and access to municipal services.
 - (2) The lot or lots to be divided are previously platted land.
 - (3) The lot or lots meet the minimum standards for lot width and area for the zoning district in which they are located.
 - (4) The division of the lots shall not cause a remaining part of a lot to become a separately described tract that does not meet the minimum standards of the zoning district in which it is located or that does not have street frontage and access to municipal services.
 - (5) The division does not result in a split zoning classification on a single lot.
 - (6) The division does not result in the creation of a nonconforming structure or use.
 - (7) No lot shall be created where the building pad area for the principal structure has an existing slope steeper than eighteen (18) percent or where a driveway steeper than twenty (20) percent is required to reach the building site. However, the planning administrator may approve the creation of a steeper lot, as an exception to this regulation, where a steeper lot is specifically consistent with a city-approved neighborhood plan or redevelopment project.

moved by _____
seconded by _____
in favor _____
against _____

2. Zoning Code § 69.305 provides for application to the planning administrator for lot split review and approval for compliance with City subdivision regulations. It states that information such as a grading plan or contour map may be required to fully represent the intent of the lot split or to determine if the lot split meets the intent and requirements of City subdivision regulations. In August 2019 an application was submitted for City review of a proposal to split the parcel of land at 1945 Rome Avenue, consisting of two 40 ft. wide platted lots with frontage on and access to municipal services in Rome Avenue, along the original platted lot line between lots 7 and 8. In October 2019 the applicant submitted a grading plan showing existing and proposed contour lines, the location of the existing house, and the proposed location of new houses on lots 7 and 8.
3. Zoning Code § 69.306(a) gives the planning administrator authority to approve lot splits that meet all of the required conditions in § 69.304. § 69.306(a) states:

In approving lot splits and adjustments of common boundaries, the planning administrator shall review the application for compliance with section 69.304 and cause the application to be reviewed by the public works department and other affected city departments, if appropriate, and shall notify the applicant of any required modifications. When all conditions are met and modifications made, the planning administrator shall stamp the survey as approved.

The proposed lot split was reviewed by the Departments of Planning and Economic Development, Safety and Inspections, Parks and Recreation, and Public Works. On November 21, 2019, based on the review by affected City departments, the planning administrator issued a preliminary approval letter notifying the applicant of approval of the lot split for compliance with the City of St. Paul's subdivision regulations, including all of the required conditions in § 69.304, subject to the following conditions:

- 1) Removal of the existing house and garage, which straddled the proposed new lot line, by a licensed contractor under a demolition permit issued by the Department of Safety and Inspections; and
- 2) Removal of existing sewer service to the existing house.

These conditions were needed for compliance with condition (6) in § 69.304 that the lot split not result in the creation of a nonconforming building. The house and garage straddling the proposed new lot line, without the required setback, would have become nonconforming structures. The preliminary approval letter stated that once these conditions were met a request for final approval of the lot split could be submitted, and that a final approval letter would then be issued subject to side setback requirements, minimizing grading near side property lines, and protection of neighboring property from surface water drainage.

4. Zoning Code § 61.701 provides that any party affected by a decision of the planning administrator may appeal the decision to the planning commission, specifying the grounds of the appeal, within ten days after the date of the decision. The November 21, 2019, preliminary approval letter stated that "any interested party may appeal this decision to the Planning Commission within ten days as provided in Zoning Code § 61.701." Copies of the preliminary approval letter were sent to the owners of adjoining property. No appeal was filed.
5. Zoning Code § 61.105, *Period of decision*, states that no zoning approval by the planning administrator shall be valid for a period longer than two years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation

pursuant to the applicable conditions and requirements of the approval, unless the planning administrator grants an extension not to exceed one year. It explains that if the use approved is no longer permitted because the code has been amended, the use must meet the requirements of § 61.803, *Amendment's effect on pending uses and structures*.

In compliance with the November 21, 2019, preliminary approval letter, demolition permits for the house and garage were issued by the Department of Safety and Inspections on March 23, 2021, (permit numbers 21-247058 and 21-247065) subject to conditions for erosion and sediment control, and the house, garage and sewer service were removed in spring 2021.

Reflecting language in Zoning Code § 61.105, the preliminary approval letter states that the approval would expire in one year, provided that the planning administrator may grant an extension of up to one year. At the request of the applicant, the code not having been amended in a way that would affect the approval, a one-year extension to November 21, 2021, was granted by the planning administrator on May 27, 2021.

6. On June 9, 2021, with the house, garage, and sewer service having been removed from the property, a final lot split approval letter was issued in compliance with the requirement in Zoning Code § 69.306(a) for planning administrator approval of a lot split when all conditions are met and required modifications made, consistent with the November 21, 2019, preliminary approval decision that final approval would be issued once the conditions for removal of the existing house, garage, and sewer service are met.
7. On June 18, 2021, the owners of adjoining property appealed the final approval of the lot split, specifying three grounds for the appeal:
 - 1) Noncompliance with the condition in Zoning Code § 69.304(7) that *"no lot shall be created where the building pad area for the principal structure has an existing slope steeper than eighteen (18) percent;"*
 - 2) Potential adverse effect on neighboring property; and
 - 3) Neighborhood opposition and concern about the addition of a new home and garage on this already dense street.
8. The planning administrator decision approving the lot split for conformance with the building pad grade condition, also stating that final approval would be issued once the conditions for removal of the existing house, garage and sewer service are met, was on November 21, 2019. The ten-day appeal period for that decision expired on December 1, 2019. Therefore, the June 18, 2021, appeal of the planning administrator decision to approve the lot split for conformance with the building pad grade condition and issue final approval once the conditions for removal of the existing house, garage and sewer service are met, after a demolition permit was issued and the house, garage and sewer service were removed based on the decision, is outside of the ten-day appeal period for that decision.
9. Zoning Code § 66.233 requires a minimum building width of 22 feet for one-family dwellings in the R4 district. The zoning administrator in the Department of Safety and Inspections considered 22 foot wide building pads in determining compliance with the condition in § 69.304(7) that *"no lot shall be created where the building pad area for the principal structure has an existing slope steeper than eighteen (18) percent."*

The certificate of survey submitted with the lot split application, signed by surveyor Daniel McGibbon on August 26, 2019, shows the east wall of the existing house about 13' from the east property line and about 27' from the proposed new lot line. With the

required 4' setback from the new lot line, there would be a 23' wide building pad for a new house on the flat building pad area of the previous house. The building pad for a new house could extend into the relatively flat area behind the eastern part of the previous house and still be well within the 18% building pad slope standard. The building pad for a new house could also extend east a bit and be within the 18% building pad slope standard.

The certificate of survey submitted with the lot split application, signed by surveyor Daniel McGibbon on August 26, 2019, shows the west wall of the existing house about 16' from the west property line and about 24' from the proposed new lot line. With the required 4' setback from the new lot line, there would be a 20' wide building pad for a new house on the flat building pad area of the previous house. The building pad for a new house could extend west a bit and be within the 18% building pad slope standard. For example, if the building pad is extended west 3' and slopes down 1' over the 3', the building pad would have a 1' grade change over a width of 23', a slope of about 4½ %.

The appeal notes the change in grade from west to east across the entire 80-foot wide parcel. This is shown on a certificate of survey attached to the appeal, measured from an elevation of 190' below a retaining wall and slope along the west property line to an elevation of 208' along the neighbor's fence above a retaining wall and slope along the east property line. This would be a rise of 18 feet over a run of 80 feet, an average slope of 23%. However, this is the average slope across the entire parcel, not the building pad area slope that is the subject of the requirement in Zoning Code § 69.304(7).

10. The appeal states that maximizing lot coverage with two new houses will exacerbate the risk for flooding for the neighbor to the west (1949 Rome) by increasing the impervious area, that the developer's proposal does not address how soil on the 1937 Rome lot to the east will be supported with a retaining wall, and that a 5-foot setback from the east lot line would not be adequate. These concerns appear to stem from the grading plan showing existing and proposed contour lines, the location of the existing house, and the proposed location of new houses on lots 7 and 8 submitted by the lot split applicant on October 26, 2019, to show the intent of the lot split and help determine if the lot split meets requirements of City subdivision regulations.

The preliminary approval letter did not approve the grading plan, which showed proposed grading and proposed new retaining walls along the side property lines. Rather, the preliminary approval letter specifically said that any grade change within 5' of lots 6 and 9 must be minimized, and that all grading and new construction on the lots must be designed to protect neighboring property from surface water drainage. This was also noted in the final approval letter. These are issues commonly addressed in detail as part of site plan and building plan review prior to issuance of building and grading permits.

Zoning Code § 63.111, *Residential development on steep slopes*, provides a number of requirements and standards for residential development on slopes greater than 12%, including an engineering report on slope stability and hydrology. It states that "buildings should be designed to fit into the hillside without significant regrading to protect the stability of the slope and preserve existing trees while preventing excessively tall retaining walls and unattractive trough-shaped yards between buildings and retaining walls. Multi-story buildings are encouraged to reduce the area of the building footprint."

Zoning Code § 63.111(d) requires that "retaining walls taller than four feet shall be constructed under city permit with frost footings as required by the state building code and shall be engineered to retain lateral earth pressure consistent with the principles of soils mechanics, and shall be detailed to minimize hydrostatic pressures."

11. The appeal states that the neighborhood does not support this project as evidenced by a petition, neighbors are concerned about the addition of a new home and garage on this already dense street, there is concern about a single builder constructing two new houses here, and the developer has already proven not to be capable of efficiently, safely and effectively completing this difficult project. The conditions for lot split approval specified in Zoning Code § 69.304 and § 69.306 do not include neighborhood support and the capability of a particular developer. Rome Avenue is designed to handle development of one-family dwellings on the 40-foot lots originally platted along it.
12. § 61.704 provides that the planning commission may reverse, affirm or modify the decision appealed from. § 61.107 provides that the planning commission may impose such reasonable conditions and limitations in granting a zoning approval as determined to be necessary to fulfill the intent and purpose of the zoning code, to ensure compliance, and to protect adjacent properties. To fulfill the intent and purpose of the zoning code, ensure compliance, and protect adjacent properties, it would be reasonable to condition approval of the lot split on compliance with Zoning Code § 63.111, *Residential development on steep slopes*

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Scott and Taylor Ames and Kirk and Rebecca Pennings, for an appeal of a lot split approval by the planning administrator at 1945 Rome Avenue, is hereby denied, subject to the following conditions:

1. Development on the new lots must comply with Zoning Code § 63.111, *Residential development on steep slopes*, requirements and standards. New houses shall be set back at least 7 feet from neighboring lots 6 and 9, designed with at least 2 stories to minimize the building footprints, and designed to fit into the site without significant regrading to protect the stability of slopes and preserve existing trees while preventing excessively tall retaining walls and unattractive trough-shaped yards between buildings and retaining walls.
2. All grading and new construction on the lots must be designed to minimize grading within five feet of neighboring lots 6 and 9, and to protect neighboring property from surface water drainage.