

**MINUTES OF THE ZONING COMMITTEE**  
**Thursday, July 15, 2021 - 3:30 p.m.**

PRESENT: Baker, Grill, Hood, Reilly, Syed, and Taghioff  
EXCUSED: DeJoy and Rangel Morales  
STAFF: Marilyn Rosendahl, Grace Bubel, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Baker. He stated that the chair of the Planning Commission had determined that due to the COVID-19 pandemic it is neither practical nor prudent for the Zoning Committee to meet in person, and therefore the meeting was being conducted remotely, with all members of the Zoning Committee attending the meeting remotely. The public is also able to join the meeting remotely and can speak during the public hearing portion or submit comments by noon on the day before the meeting.

**1945 Rome Lot Split Appeal - 21-277-255 - Appeal of lot split approval by the planning administrator. 1945 Rome Avenue, between Howell and Wilder**

Marilyn Rosendahl presented the staff report with a recommendation of denial for the appeal based on staff findings. She said District 15 does not intend to take a position on the appeal, and there were no letters in support or opposition.

Mrs. Rosendahl said that the subject property was previously platted as Lots 7 and 8, Highview Addition. A one-family home was built on the parcel made up of combined lots 7 and 8, and recently demolished after the proposed lot split to again separate lots 7 and 8 received preliminary approval. She indicated that the building pad areas would comply with R4 zoning district setback and dimensional requirements.

Mrs. Rosendahl discussed staff findings on three specified grounds for appeal and other concerns by the appellants submitted in their application. The first was that the appellant contends noncompliance with 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 18%.” Mrs. Rosendahl explained that the appellant calculated a 23.8% slope across the entire 80’ wide parcel, not just the building pads that are the subject of the requirement in § 69.304(7).

The second specified grounds for appeal was that that increased impervious surface will exacerbate risk of flooding, and that the developer’s proposal does not address how soil will be supported with a retaining wall. Mrs. Rosendahl indicated that these issues are addressed as part of site and building plan review prior to issuance of building and grading permits. Adjoining property must be protected from surface water drainage. Code requires that retaining walls >4’ tall be constructed under city permit with frost footings as required by state building code, engineered to retain lateral earth pressure, and detailed to minimize hydrostatic pressures.

The third specified grounds for appeal notes neighborhood opposition, concern about development of two single family homes on this already dense street, and concern about the capability of the developer. Marilyn said that 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.

Chair Baker asked if the neighbors who signed the petition had any other concerns. Mrs. Rosendahl went over concerns in the letter provided in the application for appeal, including that the developer had not returned attempts at communication from neighbors, an extended development timeline, a biffy left in the public right of way, retaining wall construction requiring trespass, and removal of a tree on the property line without permission.

The appellant, Kirk Pennings, 1937 Rome Avenue, along with his wife, Rebecca Pennings, filed a joint appeal with Scott and Taylor Ames of 1949 Rome Avenue. Mr. Pennings provided his background and said he is a construction professional and he owns a commercial construction company that specializes in urban infill and multi-family projects throughout Minneapolis and Saint Paul. He also has a degree in civil engineering. He said they did not appeal at the time of the preliminary approval, but he has been in contact with Paul Dubruiel (zoning staff) since September 3, 2019, when they first received notice that there was an application to split the lot. He brought up his concerns about the site grade conditions and the fact that it was not in compliance with section 69.304 of the zoning code. He submitted an email to Paul Dubruiel with his concerns and photos. They received a copy of the November 21, 2019, preliminary approval letter from Paul Dubruiel. He talked to Paul, who advised them not to appeal the preliminary approval given that the applicant had to satisfy two conditions for final approval including removal of the existing house and disconnecting the sewer and water. The letter stated that the applicant had to meet those conditions of preliminary approval within one year of the letter, by November 21, 2020. The conditions were not met at that time, so they assumed that the file had been closed and the preliminary approval had expired. They weren't notified of an extension. They had no further contact with staff or the developer until March 22, 2021, when the developer started on the disconnects around 6:00 p.m. without any notice given to neighbors. The house was demolished shortly after that. They have had some contact with the developers since then and have a disagreement with the developer about a tree that was removed on the lot line.

Mr. Pennings said his main concern is with the grading of site and explained why he thinks it doesn't meet zoning code requirements. He showed the grading plan submitted by the developer to the City and stamped received October 26, 2019 (attached), noting that his comments on the grading plan are in red. He said that two houses can't fit on this lot, and the reason there was only one house on the lot is due to the grading issues. The original house was built in the middle of lots 7 and 8 to allow for terracing of retaining walls on both sides of the property. He noted that Zoning Code section 69.305 states that the applicant shall submit six copies of a Certificate of Survey. The grading plan is not stamped or signed by a licensed engineer and appears to be from S.D.S. Consulting, which he can't find listed as a business and shares the same address as the developer. The second document he showed is the McGibbon Certificate of Survey (attached). He said the two surveys use different datums. The McGibbon Certificate of Survey, signed and stamped by a licensed engineer, shows a different datum point and this could be part of the confusion. The McGibbon Certificate of Survey shows a grade change from 208 to 190 across the lot, a 23% grade change. The October 26, 2019, grading plan from the developer shows a building pad elevation of 895.5, which converts to 201.4. The grading plan shows the top of a proposed new retaining wall at 898.5, which converts to 204.4, a difference of three feet. The McGibbon Certificate of Survey shows actual grade at 208, but the grading plan shows the top of the retaining wall at 204.4. There is a discrepancy of four feet that is not accounted for in the developer's grading plan. The top of wall elevations shown on

the grading plan on both sides of this property are incorrect. He is not sure why the Zoning Administrator did not require a signed and certified grading plan for the lot split, but it should be required and could clarify discrepancies.

Mr. Pennings also referenced Sec. 63.111 in the zoning code about residential development on steep slopes (attached). He noted that Sec. 63.111(b) says that buildings should fit into the slope to avoid excessive retaining walls, and said the developer is maximizing the lot coverage of the houses with five-foot setbacks. Based on his calculations, if the height of the east retaining wall is 7.4 feet and the west is 9.57 feet it will be an unattractive trough shaped yard and have an adverse effect on neighboring properties. He would like to request that a grading plan from a licensed engineer is provided before the lot split is approved.

The lot split applicant, David Wickiser, 354 Duke Street, Saint Paul, said they contracted with Providence Homes and have had successful endeavors with them, and haven't had issues with neighbors. They agree with the City's conclusion regarding the building pad and slope. He will investigate the appellant's request and if there is an issue, they will be happy to satisfy the request to provide a stamped survey. They have had surveyors at the property. He said they are required to go through a site plan review process and will address any flooding issues. They will not be depositing water onto anyone else's property. He said that neighborhood support is not a requirement for a lot split. They have not received any complaints from the Department of Safety and Inspection, and if they had they would have corrected them immediately.

Lisa and Jeff Cragg, owners of Providence Homes, 1715 7<sup>th</sup> St W, Saint Paul, spoke in opposition to the appeal. They are the licensed general contractors overseeing this project. They have done a significant amount of property development in Saint Paul. They develop vacant lots, Category 2 properties, and new construction. They have never had any issues with surrounding property owners in previous projects. They have always complied with building plan approval conditions regarding grading and water diversion.

Mr. Pennings said the grading plan for this site wasn't checked by a licensed engineer, and that is something he is requesting. He said there is a discrepancy in the grades provided in the application, and the approval was done based off a potentially bad document that needs to be reviewed by a licensed engineer.

No one spoke in support of the appeal. The public hearing was closed.

Commissioner Reilly moved the appellant to deny the appeal of the lot split. The motion failed due to lack of a second.

Peter Warner asked about the Certificate of Survey and the second survey submitted by the lot split applicant showing building pad areas and contour lines, two different surveys with two different elevations, and which was used to determine if the grade of the building pads meets the zoning code requirement. Mr. Warner said it may be worthwhile to lay this over for two weeks to clarify the slope issues unless staff is prepared to address that now. He said that Finding 3 references two surveys, one listed as a Certificate of Survey with no date attached and one dated October 26, 2019. He wanted to know if these were the same document.

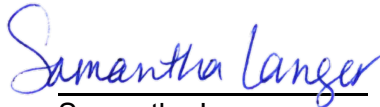
Mr. Torstenson said that they are not the same document. The staff report notes that the grading plan survey submitted by the lot split applicant, showing building pad areas and two foot contour lines and stamped received by the City on October 26, 2019, was used by DSI staff to help determine that the proposed lots have building pads that meet City requirements for building pads at least 22' wide with a slope less than 18%. The appeal included a copy of the Certificate of Survey marked up by the appellant to show the grade change from east to west across the entire 80-foot parcel rather than the slope of the building pads.

Commissioner Hood moved lay over of the appeal of the lot split to July 29, 2021, to get some clarity on these issues. Commissioner Grill seconded the motion.

The motion passed by a vote of 6-0-0.

Adopted                      Yeas - 6              Nays - 0              Abstained - 0

Drafted by:



Samantha Langer  
Recording Secretary

Submitted by:

  
Marilyn Rosendahl (Jul 30, 2021 09:04 CDT)

Marilyn Rosendahl  
City Planner

Approved by:

  
Anne DeJoy (Jul 30, 2021 15:27 CDT)

Anne DeJoy  
Chair









# 21-277-255 1945 Rome Zoning Committee Minutes

Final Audit Report

2021-07-30

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