



Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

December 12, 2023

REGULAR MEETING

Minutes

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street. Chair Verner noted that item VII had been removed from the agenda and would be continued at the January 23, 2024 meeting.

Commissioners Present:

Lisa Verner
Doug Knauer
Eric Herron
Russell Phillips
Kerry KenCairn
Susan MacCracken Jain
Gregory Perkinson

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Aaron Anderson, Senior Planner
Michael Sullivan, Executive Assistant

Absent Members:

Council Liaison:

Paula Hyatt

II. ANNOUNCEMENTS

Community Development Director Brandon Goldman made the following announcement:

- The City will be holding a Commissions and Committees appreciation event on December 18, 2023. All sitting commissioners and committee members were invited.

III. CONSENT AGENDA

1. Approval of Minutes

- a. November 14, 2023, Regular Meeting
- b. November 28, 2023, Special Meeting

**Commissioners Phillips/Perkinson m/s to approve the consent agenda as presented. Voice Vote:
All AYES. Motion passed 7-0.**

IV. PUBLIC FORUM – None





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V. **UNFINISHED BUSINESS**

A. **Approval of Findings for PA-T2-2023-00043, 192 North Mountain Avenue**

Ex Parte Contact

Chair Verner recused herself from participating in the discussion of this item due to having lived in two homes developed by the applicant team. Vice-Chair Knauer presided over this portion of the meeting. No ex parte contact or site visits were reported.

Deliberation and Decision

Commissioner MacCracken Jain asked how the satisfactory completion of the storm drain on the site would be governed. Mr. Goldman responded that staff would conduct a site visit before signing the final survey plat in order to determine if all conditions of approval had been met.

Commissioners MacCracken Jain/Phillips m/s to approve the Findings. Commissioner KenCairn abstained from voting due to her absence from the November 14, 2023 meeting. Roll Call Vote: All AYES. Motion passed 5-0.

VI. **TYPE II PUBLIC HEARING**

A. **PLANNING ACTION:** PA-T2-2023-00044

SUBJECT PROPERTY: 822 Oak Street

OWNER / APPLICANT: Suzanne Zapf for Overlook Drive, LLC

DESCRIPTION: A request for Outline and Final Plan approval for a five-lot/four-unit Performance Standards subdivision for the properties located at 822 Oak Street. The Subdivision was previously approved in 2021 and some infrastructure work has been completed, however land use approval subsequently expired. The application also includes requests for: a Variance to allow a private driveway to serve four units (AMC 18.4.6.040.C.1) where dedication of a public street is typically required, an Exception to Street Standards to not install city standard street frontage improvements along Oak Street. Finally, the application requests relief from the adopted Physical and Environmental constraints maps to reflect the topography on site and allow minor encroachment into slopes exceeding 35%. **COMPREHENSIVE PLAN**

DESIGNATION: R-1-5; **ZONING:** Single Family Residential; **ASSESSOR'S MAP:** 39 1E 04CA; **TAX LOT:** 200 & 201.

Chair Verner returned to preside over this portion of the meeting.





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Ex Parte Contact

Vice-Chair Knauer announced that he had interacted socially with one of the applicants, but had removed himself when this project was mentioned. He stated that he had conducted a site visit earlier today.

Chair Verner and Commissioner KenCairn stated that they had each conducted a site visit, and had both participated in the original application when it came before the Commission in 2021.

No other ex parte contact or site visits were reported.

Staff Presentation

Senior Planner Aaron Anderson stated that this project was originally approved by the Commission on October 12, 2021, but that the permit had expired before the work could be completed, necessitating a new application process. Mr. Anderson briefly outlined the previous approval of the project, explaining that the tree removal portion of the original application had been completed which is why it was not part of the new submittal (see attachment #1).

Mr. Anderson stated that the new application is requesting relief from two standards, the Solar Performance Standard and the Physical and Environmental Constraints Standards. He then directed the Commission's attention to condition of approval #10b of the 2021 application, which stated: *"The areas at the east edge of the property overlooking the Bear Creek floodplain corridor with slopes in excess of 35 percent are unbuildable under AMC 18.3.10.090.A.1 and shall not be included in building envelopes, as proposed by the applicant. Prior to disturbance of any slopes greater than 25 percent within the building envelopes, the applicant shall first provide a geotechnical report prepared by a geotechnical expert indicating that the site is stable for the proposed use and development."*

Mr. Anderson reported that subsequent site inspections, conducted after the application was approved, revealed the presence of unauthorized fill within the steep slopes on the property, necessitating remediation measures.

Mr. Anderson reminded the Commission of the process under which staff calculates the slope for a solar setback. Mr. Anderson described how lot #4 would be required to meet solar standards under Ashland Municipal Code (AMC) 18.4.8.040A when the applicants submit for a building permit. He stated that staff had calculated a required 40ft setback to a shadow producing point [21 foot above natural grade] on the building on lot #4 in order to meet this standard.

With regards to the request for relief from Physical and Environmental Constraints Standards, Mr. Anderson noted that there are allowed exceptions under AMC 18.3.10.090, but that these are typically applied to existing lots without adequate building areas outside of the 35% maximum slope. The





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section that deals with newly created lots note that these lots “shall contain a building envelope with a slope of 35% or less.”

Mr. Anderson stated that staff recommends approval of the outline and final plan approval for the proposed subdivision, but denial of the request for relief from the Physical and Environmental Constraints Standards.

Questions of Staff

Commissioner KenCairn asked if the developer would need to stay away from the slopes that are over 35% during construction. Mr. Anderson responded that the building envelope should include the entire area that is being developed, including excavation of the slope. Commissioner KenCairn commented that slopes can become disturbed during the development process.

Vice-Chair Knauer requested clarification regarding the geotechnical report from the Galli Group included in the application. Mr. Anderson requested that this inquiry be directed towards the applicant. Vice-Chair Knauer pointed out that the report stated that “*the removal of the undocumented fill has restored the site to its native condition.*” Commissioner KenCairn commented that it would be difficult for the applicant to show that they had undone this work. Mr. Goldman noted that the Galli Group report had been submitted on June 28, 2023, while a more recent report from Polaris Land Surveying had been submitted on August 31, 2023, and shows a more accurate state of the site.

Vice-Chair Knauer expressed reticence to automatically approving aspects of the application simply because they had previously been approved. He stated that it didn't feel accurate from an administrative perspective. Chair Verner stated that staff had decided that the work that had already begun was vested, such as the sidewalks and tree removals. Mr. Goldman stated that staff considers a permit in progress once it is issued, but that the Commission can ask the applicant why they believe an exception is warranted. Vice-Chair Knauer suggested that this topic be discussed in-depth at a later date, but that it was his opinion that an expired permit should be considered defunct.

Applicant's Presentation

Amy Gunter of Rogue Planning and Development Services gave a brief overview of the project, highlighted the largely flat area, and displayed a Master Utility Map to show how utilities had been extended into the property. She described how the proposed private drive would include a turnaround for fire access before splitting to each individual lot. She added that two of the large oaks that were originally going to be removed from the common area had been retained, and that the common area features are covered by the Homeowners Association's (HOA) standards of care rules.





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Ms. Gunter described how the home that had previously occupied the area had burned down, and that the debris and trash was now mixed throughout the hillside and covered large areas of the property. She explained that the development team had excavated the slope and removed fill from the site. She informed the Commission that lot #4 is 35.8% slope, putting it .8% over the allowed maximum, and that the Physical and Environmental Constraints Ordinance is a source of consternation and confusion for clients wishing to develop in the area. Ms. Gunter referenced AMC 18.3.10.020, stating that it allows for up to 1000sqft of disturbance and up to 20 cubic yards of material, which she argued should allow the applicant to scrape the dirt in the surrounding area and achieve slope requirements. She commented that the developer could have simply removed the .8%, but that the team wanted to keep the City informed of the situation on site.

Ms. Gunter pointed out that the Kestrel Park subdivision had steeper slopes on portions of the development site, but that the process for approval appeared to be much more streamlined. She stated that the Physical and Environmental Constraints standards appeared to be applied differently between the Kestrel Park subdivision and this application. She requested that those same standards be applied here.

Ms. Gunter likened the proposed solar component of the application to the Kestrel Park subdivision. She stated that house designs were not included in the original application, and so the solar impact was not known at the time. She added that the house on lot #4 has been designed with sunken floors in order for it to meet solar standards.

Ms. Gunter addressed Vice-Chair Knauer's concerns by stating that many of the requests in the application are identical to the original application that was approved in 2021, and requested that those requests be approved.

Suzanne Zapf, the owner of the subject property, informed the Commission that her permit expired because her contractor had departed this project in order to help victims of the Alameda fire with their construction projects.

Questions of the Applicant

Commissioner KenCairn requested information regarding the square footage of the encroachment area. Ms. Gunter responded that the encroachment area measures 188.5sqft. Commissioner KenCairn asked why the applicants did not argue that the standards did not apply due to the area's relatively small size. Ms. Gunter cited the various exemptions and applicability of hillside standards within the AMC that trigger development. Mr. Severson added that the size of the encroachment isn't the issue, but that new parcels must have a buildable area that doesn't contain areas with slopes of more than 35%.



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Commissioner MacCracken Jain directed the applicant's attention to a letter that staff received from Lisa Buck, whose property is adjacent to the one in question, and had raised concerns regarding the excavation of the site (see attachment #2). Ms. Zapf responded that she had spoken with Ms. Buck to address her concerns.

Vice-Chair Knauer asked if the applicant would be willing to consider other options for development. Ms. Gunter responded that they would ideally receive approval to excavate the area over 35% slope, but that their contractor had indicated that there are construction alternatives. Chair Verner suggested that the home be moved to the west to avoid the slope entirely. The applicant responded that this would alter the layout of the home. Mr. Goldman pointed out that the front door of the building on lot #4 could still face the street even if the building itself were redesigned.

Commissioner KenCairn asked if the rest of lot #4 is native-buildable land. Ms. Gunter responded that it is native-buildable land in terms of the landscaping, but not native-grade. Commissioner KenCairn asked staff if the Commission could approve the encroachment into the slopes in question. Mr. Anderson stated that it was staff's belief that the standard in AMC 18.3.10.090A.2 would not allow this encroachment. Commissioner KenCairn inquired if there is a legal pathway for the applicant to remove the debris from the site, and then conduct another geotechnical survey to determine if that removal had affected the slope. Mr. Goldman responded that the Commission could place a condition of approval to have the applicant conduct another analysis of the slope to determine if the slope contains a significant enough amount of debris that its removal would reduce the slope below the 35% maximum. If so, then the severe constraints on the site would be removed.

Vice-Chair Knauer remarked that the applicant seemed to be of the opinion that development could result in the removal of 1% of the site's topsoil, putting the slope under the maximum 35%. Commissioner KenCairn expressed concern that such an action could set an undesired precedent for development. The Commission discussed how slopes are measured, and what criteria are considered when they are determined. They suggested that the building on lot #4 could be moved to avoid the encroachment area, provided that the building abides by solar standards. Commissioner MacCracken Jain asked the applicant if they had considered building the house outside of the encroachment area. Ms. Gunter responded that a survey done prior to development had determined that the slope was not over 35%, so the home was already designed without this in mind.

Commissioners KenCairn/Knauer m/s to approve the application with the conditions of approval suggested by staff, with the addition of condition #6.

Condition #6: In order to allow the building envelope, as proposed, that the applicant shall have a survey done of lot #4 to demonstrate that the area shown as 35% slope or greater is not a natural





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slope, or, alternatively, that the building envelope shall be modified to demonstrate that the development does not encroach into those areas of greater than 35%.

DISCUSSION OF THE MOTION: Commissioner Herron asked if the approval addressed the solar setback exception. Mr. Anderson responded that the solar setback is included in the conditions of approval. The Commission discussed how the original geotechnical surveys were conducted, and determined that the burden of proof would be on the applicant to show that there is no slope over 35% within the building envelope. The Commission also determined that the applicant would only need to conduct a survey of lot #4.

Roll Call Vote: All AYES. Motion passed 7-0.

Chair Verner closed the Public Hearing and Public Record at 8:26 p.m.

VII. **TYPE III PUBLIC HEARING - Continued to the January 23, 2024 Special Meeting**
~~A. Recommendation of draft ordinance for Parks, Trails, and Open Space Map Update~~

VIII. **OPEN DISCUSSION** – None

IX. **ADJOURNMENT**

Meeting adjourned at 8:27 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*