

CITY PLANNING COMMISSION AGENDA  
June 17, 2021

STAFF: TASHA BRACKIN

FILE NO:  
AR DP 20-00500 – APPEAL  
AR FP 20-00501 – APPEAL

**PROJECT:** APPEAL OF ADMINISTRATIVE DECISION  
RED ROCK AND YALE FINAL PLAT AND HILLSIDE DEVELOPMENT PLAN  
205 YALE AVENUE

**APPLICANT/OWNER:** DANIEL J. ROBERTSON



**PROJECT SUMMARY:**

1. Project Description: This is a request to appeal the administrative approval of the hillside development plan and subdivision plat for creation of a new lot and construction of a new single-family home, for non-compliance with City Code Chapter 7, Article 4, Site Development Standards, Part 5 Geological Hazard Study and Mitigation. Specifically, the appellant claims that the submitted and approved geologic hazards report is unsatisfactory based on the opinion that the required site reconnaissance was faulty. The property is located at 205 Yale Avenue, is 17,100 square feet in size, and is in an R1-6 HS (Single-Family Residential with Hillside Overlay) zone district.
2. Applicant's Appeal Statement: **(See "Appeal Statement" attachment)**
3. Planning and Development's Recommendation: Staff recommends upholding the administrative approval of the subdivision plat and hillside development plan, thus denial of the appeal.

### **BACKGROUND:**

1. Site Address: 205 Yale Avenue.
2. Existing Zoning/Land Use: R-1 6000 HS (Single-family Residential with Hillside Overlay)/ developed with a single-family home and accessory outbuildings including a garage
3. Surrounding Zoning/Land Use: North: R1-6 HS (Single-Family Residential with Hillside Overlay)  
West: R5 (Multi-Family Residential with Hillside Overlay)  
South: R1-6 & R-2 (Single-Family Residential & Two-Family Residential with Hillside Overlay)  
East: R1-6 & R-2 (Single-Family Residential & Two-Family Residential with Hillside Overlay)
4. Annexation: The property was annexed into the City under the Columbia Addition (Recorded November 1, 1968; ordinance unknown).
5. Master Plan/Designated Master Plan Land Use: The property is not part of a master planned area.
6. Subdivision: The property is a combination of two platted lots and a vacated roadway generally described as comprising lots 22 and 23 of Block 22 of the Assembly Grounds of the National Chautauqua Association subdivision plat.
7. Zoning Enforcement Action: None
8. Physical Characteristics: The property is moderately sloping from the north property line to the south and east areas of the property, with an approximately 28-foot drop in elevation over the entire property from 6,276 to 6,248 feet in elevation.

### **STAKEHOLDER PROCESS AND INVOLVEMENT:**

Public notice was provided for the initial applications requesting a two-lot subdivision and associated hillside development plan, pursuant to standard department protocol, which includes sending notice to adjacent property owners within 1,000 feet of the property. Postcards were mailed to 160 property owners located 1,000 feet from the property and a poster was placed on the site upon the initial application. Public notice including the procedures noted above will also be provided prior to the City Planning Commission hearing.

A neighborhood meeting was held in February of 2021 for which similar public notice was provided. Approximately twelve neighbors attended the virtual meeting, which was conducted via an electronic meeting platform. At that meeting, staff presented information regarding the project entitlement requests, gave an overview of the planning process, and facilitated a question-and-answer session among neighbors and the applicant's team of consultants. Concerns and questions raised at or prior to the meeting included the issues listed below:

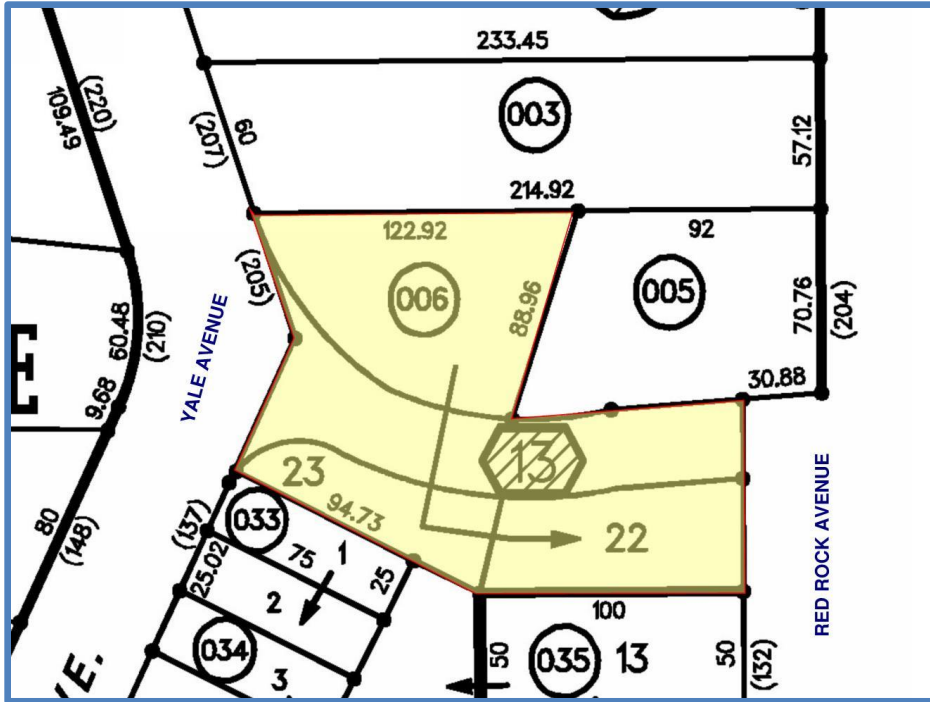
- Deterioration of the large rock near the construction site
- Geologic hazard study and recommendations related to excavation, soil compaction, and foundation
- Construction equipment causing vibration which could damage existing rock formations and impact the adjacent residence and rock formation, an irreplaceable geological gem
- Arrangement, location and size of utility lines; existing water lines and available capacity/pressure
- Existing aging sewer line on the property that will cross through the new lot, encumbering the property; Capacity of the existing sewer main on Bijou
- Existing garage (to be demolished) and non-compliance with setback requirements; protection of neighboring properties from illegal builds
- Parking on Red Rock Avenue; narrowness of street; existing homes that lack garages
- Infill of monstrous buildings that don't belong and overpopulate an overbuilt community
- Impacts from construction crews, and/or vehicles on the people living and or trying to get to their homes during this project

The concerns noted above are similar to comments expressed in the public comments received from neighbors following the initial project public notifications, and the concerns related to the geologic hazard study are discussed below in the analysis section of the staff report.

## ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN:

### 1. Background

The property is currently 17,100 square feet in area, and is a combination of two previous residential lots and a vacated street right-of-way. The property is currently developed with one home facing the Yale Avenue frontage, and a garage and driveway have been built on the eastern part of the lot, facing Red Rock Avenue. The R1-6,000 zoning designation permits one dwelling unit per lot, and requires a minimum lot size of 6,000 square feet. See the diagram below for a depiction of the historic lotting pattern; the subject property is shaded in yellow.



### 2. Planning and Zoning Context

#### a. Hillside Development Plan

An application for a hillside development plan was initially submitted to the City in July of 2020. The application requested the ability to construct a new home on the eastern portion of the property, using an existing driveway access. The hillside development plan is required when a subdivision is requested in a designated Hillside Overlay area, in order to demonstrate that the proposed subdivision would result in a buildable lot. The hillside development plan must be submitted and reviewed by the City in accordance with city code section 7.3.504 et al prior to approval of the subdivision plat. Given the level of detail provided on the initial hillside development plan, and lack of a detailed building footprint or elevation drawings, staff noted that there would be a need for a site-specific geologic hazards study to be submitted and reviewed prior to building permit review. This condition has been placed on the approved hillside development plan.

#### b. Subdivision Plat

In conjunction with the Hillside Development Plan, a final plat was submitted in July of 2020 to create a new residential lot under the existing R1-6000 zone designation. The subdivision plat was reviewed for compliance with city code, including requirements of code section 7.7.303.

#### c. Geologic Hazard Study –

A proposal for subdivision and development of property is required to provide a geologic hazard report for review in conjunction with the plat and development plan as part of city code

section 7.4.5 – Geological Hazard Study and Mitigation. The geologic hazard study for this project was prepared by Rocky Mountain Group (RMG), dated September 15, 2020, and was reviewed by City Engineering Staff as well as the Colorado Geological Survey (CGS) as noted above. The requirements of city code for scope and review of geologic hazard studies appears below:

7.4.505: SCOPE OF STUDY:

- A. In general the geological hazard study shall be of sufficient detail and scope to:
  - 1 Identify the geologic hazards affecting the development site;
  - 2 Analyze the potential negative impacts the geologic hazards will have upon the proposed project;
  - 3 Provide mitigation techniques, which will reduce to acceptable standards the risk posed to the development by any identified geologic hazards;
  - 4 Analyze potential impacts the proposed project will have on surrounding properties or public facilities related to existing geologic hazards; and
  - 5 Provide recommendations to be incorporated into the proposed project which mitigate significant potential impacts to surrounding properties or public facilities.
- B. The conclusions and recommendations of the study shall be based upon:
  - 1. Site Specific Subsurface Investigations: This is not required for master plan level studies;
  - 2. Site Reconnaissance: Site reconnaissance to identify the geologic features of the site and surrounding property;
  - 3. Previous Geologic Reports: Review of previous geologic reports within close proximity to the subject site;
  - 4. Geologic Mapping: Review of past geologic mapping in the area; and
  - 5. Experience Of Geologist: Conclusions drawn from the experience of the reviewing geologist.

7.4.506: REVIEW OF GEOLOGIC HAZARD STUDIES:

- A. Geologic Hazard Studies: Geologic hazard studies will be reviewed by staff in conjunction with the City's normal review of the land development proposal. If the review by the City determines that the study submitted is incomplete or fails to comply with the guidelines set forth in this section, the study may be rejected and a new or supplemental study may be required. The City's review shall determine whether the findings, conclusions and recommendations of the geological hazard study have been incorporated into the design of the development plan, subdivision plat, drainage plan, grading plan, street construction documents and other public improvement construction drawings. In cases where significant geologic hazards are identified, appropriate mitigation measures shall be required in conjunction with the approval of the project. Said mitigation measures shall include, but not be limited to:
  - 1. Changes to the proposed land use configuration;
  - 2. Modification of land use types;
  - 3. Modification of lot boundaries or building envelopes;
  - 4. Special foundation designs;
  - 5. Geotechnical engineering solutions;
  - 6. Limitations on irrigated landscape designs; and
  - 7. Special drainage designs.

Geologic hazard studies are reviewed by city staff for compliance with code, as well as by the Colorado Geological Survey ("CGS"). The geologic hazard study submitted for this project is included as an attachment to this staff report (**See "Geologic Hazard Study" attachment**).

d. Additional Reports

Depending on the type of project, additional reports often required for development include traffic studies, drainage reports, and land suitability analyses. In the case of this project a traffic report was not required for the new home, but drainage and other land suitability analyses were

required. These were reviewed and approved by city staff given that they met the requirements of the relevant city codes and criteria.

e. Review Process/Staff Analysis:

As noted above, the applications for final plat and hillside development plan were submitted in July of 2020 and reviewed for compliance with city code and criteria. Following initial staff review, a number of comments were provided to the applicant related to the development plan and final plat. One of the comments from city staff was specifically related to the geologic hazards study and appears below:

*“A geohazard report is required at this time to evaluate/prove that there is a buildable area on lot 2”.*

Subsequently, a geologic hazard report prepared by Rocky Mountain Group (RMG), dated September 15, 2020, was provided with the second submittal for the project. That report was sent to the Colorado Geologic Survey (CGS) for review, and was also reviewed by City staff.

Following review of that report, and based on the information provided by the applicant regarding the final location and footprint of the future home, staff commented on the geologic hazards report as it related to the proposed building footprint:

*“Site plan details will be further reviewed at time of building permit” and “A lot specific geologic hazard report with a slope stability analysis will be required for Lot 2 to be reviewed and approved by the Planning Department and Engineering Development Review Division prior to building permit approval.”*

Following review, the study was found to meet city criteria for the required content as well as proposed project parameters, given the status of the application and the representation of the future home as only a “building footprint.” The applicant will be required to provide a site-specific geologic hazards study to be submitted and reviewed prior to building permit review, per a condition on the approved hillside development plan.

A number of questions and comments were submitted from neighboring property owners during the staff review of the project, many objecting to the approval of the two-lot subdivision and hillside development plan. Some of the written comments from neighbors noted the same concerns identified above that were raised during or prior to the neighborhood meeting. Comments and questions primarily related to the rock outcroppings, and some stated that approval of a new residence would destroy views of the existing rock formations. Others noted concerns with the stability of the existing rock and the pre-existing rockfall hazards that may exist, asking why the city would allow development so close to such rock formation. Additional comments expressed concerns with the general impacts from infill development.

The applicant and RMG provided a response to the most relevant of these comments on December 14, 2020 and submitted that response to the City for review as part of the third project submittal. The geologic hazard study was also updated and provided to CGS for another review of new information including rockfall hazards. Following that review, CGS concluded that no additional issues were raised as a result of their second review of the study, and offered the following statement:

*“RMG has addressed our previous comments and concerns about the rockfall risk at the site. It is important to note that there will always be some risk, even if presently remote, of rockfall from this outcrop. It is the same risk as other nearby areas with exposed and upturned Fountain Formation sandstone bedrock. However, based on our observations of the outcrop, we concur that there is not an “imminent rockfall hazard” posed by the*

*sandstone “fin”. We would advise the property owner to make studied observations of the outcrop from time to time, looking for new cracks or bulging in the outcrop, especially after heavy rain, and freeze-thaw cycles. Such indications of instability, should they occur, can be corrected, and mitigated if noted in time.”*

As a result of the numerous neighborhood questions and comments, staff conducted a neighborhood meeting for this project in February of 2021 (see discussion in the “STAKEHOLDER PROCESS AND INVOLVEMENT” section above).

After the neighborhood meeting, the applicant and RMG provided a comprehensive response to all comments received from the neighborhood and from CGS as part of the fifth project submittal, in April of 2021. City staff reviewed all of the comments and responses from the applicant as well as input from CGS. Based upon the staff and state review of the Geologic Hazard study and criteria of city code for the hillside development plan (7.5.502.E, 7.3.504.D.3) and requirements of a final plat (7.7.303), the hillside development plan and subdivision plat were administratively approved in May of 2021.

### 3. Appeal Statement

The appellant’s appeal statement claims that the administrative decision is incorrect because the required geological hazard study that was submitted for review failed to conduct the required site reconnaissance for a geologic hazards study per city code Chapter 7, Article 4 “Site Development Standards”, Part 4 “Geologic Hazard Study and Mitigation”, section 505 “Scope of Study”. The statement also claims that, as a result, the information in the report and its recommendations are in error. The evidence submitted by the appellant in support of this claim includes the interpretation of statements in the report that RMG “will conduct a physical reconnaissance of the site” and the appellant’s belief that the RMG statement indicates “no one has actually investigated and evaluated this fin up close and personal”. The appellant goes on to state that the required site reconnaissance would have meant additional actions, in the opinion of the appellant, including coming onto the property at 204 Red Rock to walk the perimeter of the fin, take photos from all angles, take notes on the overall condition of the rock and the hillside at its base. The appellant’s statement also claims that the photos of the fin that were included in the RMG report were taken at a distance and do not show the fin from all angles/directions. The appellant statement goes on to provide examples of various features of the existing rock formation on their property and observations of that outcrop. The appellants also contend that because they believe that RMG did not conduct a suitable site reconnaissance, there is a lack of adequate mitigation measures to address the potential harm to the outcrop/formation and the hillside.

In addition, the appeal statement includes the claim that “the administrative decision is incorrect because relying on the inaccurate, incomplete RMG study, which dismisses the potential harmful impacts to the “fin” potentially violates the law. The basis for this claim appears to be a statement included in the appeal which reads as follows:

*“Because it is on our property, the “fin” is our property. It is against the law per City Statutes for “any person intentionally, knowingly or recklessly to injure, deface, destroy or sever in any manner any real or personal property”.*

According to City Code Section 7.5.906.A.4.b, a successful appeal of an administrative decision must be found to meet the following criteria:

- (1) It was against the express language of this zoning ordinance, or
- (2) It was against the express intent of this zoning ordinance, or
- (3) It is unreasonable, or
- (4) It is erroneous, or
- (5) It is clearly contrary to law.

The approval of the subdivision and development plan was not against the express language or intent of the zoning ordinance. The ordinance is meant as a guide to development and sets scope and review criteria. Staff's review of the geologic hazards report focused on whether it provided the elements of a required geologic hazard study under 7.4.505, and believes that the scope and content of the study does meet city code requirements. A number of statements in the geologic hazard study refer to conditions on the site and the study notes that test borings were conducted on the site in April of 2020. The geologic hazards study was also provided to the Colorado Geologic Survey and found to meet the requirements of city code.

The subdivision and hillside development plan approval was not erroneous nor unreasonable nor contrary to law. The plans and associated reports illustrate the needed elements for staff to make an informed decision, and this decision does not violate law. The appellant statement claims that the administrative decision is incorrect because "relying on the inaccurate, incomplete RMG study, which dismisses the potential harmful impacts to the "fin" potentially violates the law". The appeal statement uses the following as it's basis for this claim: "Because it is on our property, the "fin" is our property. It is against the law per City Statutes for "any person intentionally, knowingly or recklessly to injure, deface, destroy or sever in any manner any real or personal property". Again, staff believes that the submitted and approved geologic hazards study meets city code requirements for content and scope, and that there is no basis for claiming that the study is "...inaccurate" or "incomplete". Staff believes that the RMG study is accurate, complete, and that it included the required site reconnaissance.

Staff finds that the required appeal criteria are not met.

4. Conformance with the City Comprehensive Plan:

Staff has evaluated the proposed subdivision and hillside development plan for conformance with the City's current comprehensive plan (herein referred to as "PlanCOS"). However, it is difficult to relate this appeal application to the comprehensive plan as this appeal is focused on a geologic hazards report submittal that was reviewed under the criteria for submittal of such report. The administrative approval of a subdivision and hillside development plan based upon that report, which meets city criteria, remains appropriate.

In general, however, the support for the subdivision itself and the allowance for one additional single-family home on the new lot is supported through a number of chapters of PlanCOS.

The Vibrant Neighborhoods chapter of PlanCOS indicates the subject property is located within the Garden of the Gods/Pleasant Valley neighborhood, an Established Traditional Neighborhood under PlanCOS. The Comprehensive Plan notes that most Established Neighborhoods should expect some degree of infill. This statement underscores the fact that infill development is one of the key indicators of PlanCOS, and extends across many of the plan's themes. The proposed development is consistent with PlanCOS policies regarding infill and investment in mature and developed areas.

Another primary goal of the Vibrant Neighborhoods chapter of PlanCOS is the provision of "Housing for All" (Goal VN-2). Strategy VN-2.A-3 suggests support for land use decisions and projects that provide a variety of housing types and sizes that serve a range of demographic sectors and meet the needs of residents through various life stages and income levels.

The Thriving Economy Chapter of PlanCOS includes a goal to "Embrace Sustainability", along with Policy TE-4.A which reads: "Prioritize development within the existing City boundaries and built environment (not in the periphery)." The proposed project is an example of infill development, and will utilize existing infrastructure, hence advancing this objective.

Goal UP-2 of the Unique Places chapter is to "Embrace thoughtful, targeted, and forward-thinking changes in land use, infill, reinvestment, and redevelopment to respond to shifts in demographics, technology, and the market." Policy UP-2A goes on to recommend the "Support

of infill and land use investment throughout the mature and developed areas of the city. Strategies in place to support this goal and policy appear below:

- Strategy UP-2.A-1: Encourage the development or redevelopment of vacant properties in the core area of the city by using a combination of incentives, rezoning, and creative design solutions.
  - Strategy UP-2.A-3: Continue to implement infill supportive Code changes including provisions tailored for older developed areas.
  - Strategy UP-2.A-4: Actively support ongoing and potential infill projects, employ problem-solving approaches and continue to implement process improvements in support of infill and redevelopment.
  - Strategy UP-2.A-5: Revise zoning and building regulations to be more streamlined and flexible regarding infill, redevelopment, and mixed-use development, especially in older, underutilized commercial areas.
5. Conformance with the Area's Master Plan:  
No portion of this property is located within a master plan area.

**STAFF RECOMMENDATIONS:**

**AR DP 20-00500 – APPEAL OF AN ADMINISTRATIVE HILLSIDE DEVELOPMENT PLAN APPROVAL**

Deny the appeal, thereby upholding the administrative approval of the hillside development plan for construction of a single-family home, based upon the finding that the project submittal complies with the development standards and review criteria for a hillside development plan per City Code Chapter 7, Article 3, Section 504.D.3 and Chapter 7, Article 5, Section 502.E, as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.

**AR FP 20-00501 – APPEAL OF AN ADMINISTRATIVE FINAL PLAT APPROVAL**

Deny the appeal, thereby upholding the administrative approval of the subdivision plat, based upon the finding that the project submittal complies with the development standards for final plats per City Code Chapter 7, Article 7, Section 303, as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.