

**CITY PLANNING COMMISSION AGENDA
JULY 16, 2020**

STAFF: LONNA THELEN

**FILE NO(S):
CPC AP 20-00096 – QUASI-JUDICIAL**

PROJECT: 506 HAWTHORNE
OWNER: MICHAEL LOWERY
DEVELOPER: MICHAEL LOWERY
CONSULTANT: MICHAEL LOWERY



PROJECT SUMMARY

1. Project Description: This project is an appeal of the administrative denial of the site plan for 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 property owner did not submit a geologic hazards report or geologic hazards waiver as required for properties west of Interstate 25 per City Code 7.4.5.

While the site plan is in conformance with the required development standards for the R1-6000 zone district, the site plan (**see “Site Plan” attachment**) was denied because the submittal did not comply with City Code requirement for submittal of a geologic hazard report or submittal of a geologic hazard report waiver. The site is located at 506 Hawthorne Place, contains 9,198 square feet and is zoned R-1 6000.

2. Applicant’s Appeal Statement: (**see “Appeal Statement” attachment**)
3. Planning and Development Team’s Recommendation: Staff recommends denial of the appeal, thus upholding the administrative denial of the site plan.

BACKGROUND

1. Site Address: 506 Hawthorne Place
2. Existing Zoning/Land Use: R-1 6000 (Single-family Residential)/vacant
3. Surrounding Zoning/Land Use:
North: R-1 6000 (Single-family Residential)/single-family residential
South: R-1 6000 (Single-family Residential)/single-family residential
West: R-1 6000 (Single-family Residential)/single-family residential
East: R-1 6000 (Single-family Residential)/single-family residential
4. Annexation: The property was annexed in 1980 as part of the Reannexation of Southwest Annexation Area
5. Master Plan/Designated Master Plan Land Use: No master plan exists for this site.
6. Subdivision: Resubdivision of Blocks B, D and E Frantzhurst Refiling
7. Zoning Enforcement Action: None
8. Physical Characteristics: This site is currently vacant. There is a steep slope from Hawthorne Place north into the site with approximately 28 feet of elevation difference from Hawthorne Place to the northern most point of the lot. In addition, there are a large number trees and shrubs on-site.

STAKEHOLDER PROCESS AND INVOLVEMENT

No public notice was provided during the initial review of the site plan. Site plans are not required to have public notice as they are typically submitted with the building permit submittal to Pikes Peak Regional Building. The site will be noticed prior to the City Planning Commission hearing for the appeal. The notice will be provided to 68 property owners within a 500-foot buffer of the site notifying the adjacent property owners of the appeal.

No internal review agencies reviewed the site plan; the only review completed was by Development Review Enterprise (DRE) staff. When geologic hazard reports are submitted, Colorado Geological Survey and City Engineering review these documents. Because the applicant is appealing the requirement to submit the geologic hazard report and no report was submitted, Colorado Geological Survey and City Engineering did not review the plans.

ANALYSIS OF REVIEW CRITERIA/ MAJOR ISSUES/ MASTER PLAN CONFORMANCE/ & PlanCOS

1. Review Criteria / Design & Development Issues
 - a. Site Plan

Prior to any single-family residential home being constructed, a building permit is required to be submitted and approved by Pikes Peak Regional Building Department (PPRBD). The building permit and construction review is sent to the Development Review Enterprise for a review to ensure compliance with City Zoning standards. This review

includes, but is not limited to, review for building height, setbacks, lot coverage, zone district, and use allowance. If a property is west of I-25 or in a landslide susceptible or mine susceptible area and a geologic hazard report was not previously approved, a geologic hazard report is required to be submitted in conjunction with the site plan (City Code 7.4.5 – Geological Hazard Study and Mitigation).

A site plan was previously submitted and reviewed for a nonuse variance to allow a 13-foot front yard setback where 25 feet is required per City Code 7.3.104. This site plan was specifically reviewed and approved to allow the structure to be moved forward due to site constraints. Staff did not require a geologic hazard report during this review because that was not a requirement of the nonuse variance submittal.

When staff reviewed the site plan submitted with this application, staff found the items listed below were not provided as part of the submittal. If the appeal is upheld, staff recommends these items be required to be provided by the applicant prior to building permit approval.

1. Building elevations that meet the overall height allowance for the zone district.
2. Confirmation that the building footprint layout matches the structural drawings provided to PPRBD. This footprint must meet all building setbacks.

b. Geologic Hazard Report

A geologic hazard report is required unless the site qualifies for an exemption per City Code Section 7.4.503.A, or provides and receives approval of a geologic hazard waiver per 7.4.503.B and 7.4.503.C. The geologic hazard waiver form (**see “Geologic Hazard Waiver” attachment**) specifically requires a professional geologist or professional geotechnical engineer to fill out the form and provide a letter stating that 7.4.503.A 2, 3 and 4 noted below are not exhibited on site.

7.4.503.A. Exempt Lands: Those lands lying east of Interstate Highway 25 are presumed to be exempted from the requirements of this part unless the owner, applicant or City staff is aware of the existence of any of the following characteristics on the property:

- 1. Land lying within the hillside area (HS) overlay zone or the streamside (SS) overlay zone or with a 100-year floodplain or any Potential Landslide Susceptibility and Mine Subsidence map published by the Colorado Geological Survey.*
- 2. Slopes (existing or proposed) exceeding thirty three percent (33%) or which are otherwise unstable or potentially unstable.*
- 3. Underground mining or subsidence activity.*
- 4. A history of a landfill or uncontrolled or undocumented fill activity.*
- 5. Other geologic hazards which pose a risk to the proposed project, other than seismicity, radiation (radon), compressible soils, shallow water table or springs, expansive soils or expansive bedrock which can be mitigated with standard foundation design/construction practices.*

B. Waivers: The Manager, in consultation with written approval of the City Engineer, may waive the requirement for the submittal of a geological hazard study on a property that is not otherwise excluded or exempted from the provisions of this part for the following:

1. Master plans, development plans or subdivision plats for which geologic hazard reports have been previously prepared and reviewed and which are still considered to be relevant.

2. Development proposals located west of Interstate Highway 25 which exhibit none of the characteristics listed within subsections A2 through A4 of this section.

C. Waiver Request: To obtain a waiver, the applicant shall submit a waiver request, which states the project meets the above noted criteria, and is prepared by a professional geologist or geotechnical engineer, who is qualified in accord with section [7.4.504](#) of this part. (Ord. 96-74; Ord. 01-42; Ord. 11-72; Ord. 17-26)

Staff communicated the requirements for the site plan and geologic hazard report or geologic hazard waiver to the applicant via both a phone conversation and emails to the applicant to ensure that all requirements were clearly understood prior to this appeal moving forward. The applicant understood the requirements and decided not to submit a geologic hazard report or geologic hazard waiver.

Staff relies on the applicant to provide the documentation for the submittal of either the geologic hazard report or the geologic hazard waiver. In this case, no documentation was submitted. Since the site was appealed to City Planning Commission, staff contacted the Colorado Geological Survey and City Engineering staff to assist in better explaining why a geologic hazard report is required for this site. The following information was provided as a general review of the site **and is NOT to be considered a formal geologic hazard review of the site.**

- The site is underlain by the Pierre Shale (at the surface) and has high swell potential. The potential for swell should be evaluated with laboratory tests of samples obtained from drilling.
 - Corrosive soils are typically associated with the Pierre Shale. Corrosion to concrete should be evaluated in typical lab tests.
- The site is in a mapped landslide susceptibility zone (**see “Landslide Susceptibility Layer” attachment**).
 - The slope is considered potentially unstable unless proved otherwise. (The Pierre Shale can slide on slopes less steep than this one). Development (and site grading) can change the dynamics of slope stability (increased loads, decreased support by cuts, increased moisture content, etc).
 - The slopes in the site appear steeper than 3:1 or 18-degrees (it is generally recommended that slopes not be constructed steeper than 3:1). The slope adjacent to the public street is very steep. For about first 10 feet, the slope drops off approximately at a 1:1 or 45 degrees then the lot is drops off at approximately a 3:1 to 4:1 slope or 18 to 14 degrees.
 - Site erosion must be managed due to the bedrock and soils derived from it.
 - A full geologic hazard report is required along with a slope stability analysis to properly identify the geologic hazards, such as expansive soils, failure planes, slope creep, and unstable slopes that may exists on the site and provide mitigation recommendations for those hazards. The geologic hazard report will provide the analysis and construction recommendations to assure the earthwork on the lot, and the construction of the house do not destabilize the slope and cause structural damage or failure to the public street and the proposed house. It will also provide design recommendation that the geotechnical engineering company will utilize to properly design the retaining walls that will structurally support Hawthorn Place and foundation design for the house.

In addition to discussing this site with CGS and City Engineering, staff also discussed this site with PPRBD staff to determine what would be required at building permit from PPRBD. Per the 2017 Pikes Peak Regional Building Code (**see “2017 PPRBD code” attachment**) section R401.1.1, a design professional is required for foundation systems unless one of the exceptions is met. In this case, the exceptions are not met and a design professional is required for the foundation system. In addition, per R401.1 a soil test is also required to determine the soil’s characteristics for the building. This report is required to be provided by a design professional licensed by the State of Colorado.

Based on the information provided in City Code and the 2017 Pikes Peak Regional Building Code and the information provided by CGS staff, City Engineering staff and PPRBD staff, this site is required to have a geologic hazard report and a soils study.

c. Applicant Appeal Statement

The appellant argues that there are three main issues with being required to providing a geologic hazard report or geologic hazard waiver in his appeal statement (**see “Appeal Statement” attachment**). The three issues are that not all homes in the landslide susceptibility zone exhibit conditions that should require a geologic hazard report, there are issues getting drilling samples onsite due to the steep terrain and the cost to do a geologic hazard report is exorbitant and adds to the construction costs.

The landslide susceptibility area was created to identify the general areas where geologic hazard concerns could exist. Not all homes west of 1-25 are required to do a full geologic hazard report, as mentioned above, if qualified under the geologic hazard waiver. In this case, the applicant states on page 3 of the appeal statement that neither Entech or RMG (two geotechnical firms that often submit geologic hazard reports to the City for review) would discuss a geologic hazard waiver and that a quote (provided below) for a geologic hazard report was given. This backs the staff discussion previously explaining that a geologic hazard report is required due to subsurface concerns.

From page 3 of the appeal letter:

The cost of the geohazard report as quoted to the Appellant by leading geoenvironmental engineering firm is:

Subsurface Soil Investigation	\$1,465
Geologic Hazard Study	\$2,960
Slope Stability Analysis	\$2,530
Consultation and Professional Engineering/Geologist Services	\$650-\$1,250

Total \$7,206, doesn’t include additional consulting for the foundation design.

The applicant notes that the drilling rigs that are required for the geologic hazard report are not able to traverse the slope down into the site; therefore, a road that is built to a slope of 15 degrees or less would be required to access the site. The applicant asserts that this road is an additional cost to the construction of the site. Staff believes that the road could be placed in the same location as the applicant was proposing the driveway to the garage as depicted on the site plan and if done properly could be used for both the drilling and the long term access into the site.

The applicant estimates that the cost for the permit, including infrastructure fee (\$25,000), geologic hazard report (\$7,500) and temporary driveway (\$12,000) is \$44,500. The applicant believes these fees are exorbitant. The permit fee would be charged even if a geologic hazard report was not required and the applicant would still need to build a driveway into the site; therefore, the only additional fee is the \$7,500. This cost to do a

geologic hazard report provides the needed details to determine if this lot is buildable and if there are potential long term concerns with building on this lot. All the standard reasons for requiring a geologic hazard report are apparent with this site, as discussed previously, and the per the City Geologic Hazard Code, the City is required to apply these requirements.

d. Criteria For Review Of An Appeal Of An Administrative Decision

The criteria from 7.5.906.A.4 is listed below. The applicant is responsible for showing that the administrative decision made by staff is not correct because it did not meet the criteria listed in code.

7.5.906.A.4 - Show that the administrative decision is incorrect because of one or more of the following:

(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.

As stated previously, the express language of the zoning ordinance states that a geologic hazard report is required unless the site qualifies for an exemption per 7.4.503.A or provides and receives approval of a geologic hazard waiver per 7.4.503.B and 7.4.503.C. In this case, neither a geologic hazard report nor a geologic hazard exemption were provided for review.

The applicant argues that the application of 7.4.503 is unreasonable due to the cost requirements. As discussed previously, the applicant estimates that the cost for the permit, including infrastructure fee (\$25,000), geologic hazard report (\$7,500) and temporary driveway (\$12,000) is \$44,500. Staff noted that the driveway cost and infrastructure fees would be a part of normal development. The additional \$7,500 cost for a geologic hazard report is required by City Code to determine if this lot is buildable and if there are potential long term concerns with building on this lot. Staff finds these costs reasonable.

The decision by staff is not erroneous or clearly contrary to law.

Staff finds that the appeal of the site plan for 504 Hawthorne does not meet the appeal review criteria set forth in City Code Section 7.5.906.A.4 and therefore the appeal should be denied.

If the Planning Commission chooses to uphold the appeal, thus approving the site plan without a geologic hazards review, staff requests the following conditions be added to the motion:

1. Include elevations with the building permit submittal that meets the overall height allowance for the zone district.
2. Include the final building footprint layout to match the structural drawings provided to PPRBD. This footprint must meet all building setbacks.

2. Conformance with PlanCOS

PlanCOS is a high level and visionary document foundationally laid out as a theme based approach to alignment of development intentions for the City. Because the issue at hand is not meeting a technical code requirement, conformance with PlanCOS was not taken into consideration.

3. Conformance with the Area's Master Plan

This site is not within a master planned area.

STAFF RECOMMENDATION

CPC AP 20-00096 – Site Plan Appeal

Deny the appeal, thus upholding the administrative denial of the site plan for 506 Hawthorne Place, based upon the findings that the appeal does not meet the appeal criteria set forth in City Code Section 7.5.906.A.4.