

STAFF REPORT

Date: March 13, 2024

To: Mayor and City Council

Through: Doug Thornley, City Manager

Subject: **Staff Report (For Possible Action): Appeal of the Hearing Officer's decision to uphold the approval of building permits (BLD23-03075 and BLD23-05279) issued for a fence and retaining wall proposed on the southern property line of a parcel located at the northeast corner of the intersection of Outlook Drive and Belford Road, approximately ±260 feet north of Dolan Way (2600 Outlook Drive). The site has a zoning designation of Single Family – 3 units per acre (SF-3) and a Master Plan land use designation of Single-Family Neighborhood (SF). The appeal was filed by Michael Powell. Council may affirm, reverse, or modify the decision of the Hearing Officer.**

From: Mike Railey, Planning Manager

Department: Development Services

Summary:

The Development Services Department approved a fence permit (BLD23-03075) on October 17, 2023, to permit the construction of ±150 linear feet of wood fence with fabric on top, to be located along the southern property line of 2600 Outlook Drive (assessor's parcel number [APN] 018-253-15- **Exhibits A and B**). The fence height was permitted to be four feet within the front yard setback, adjacent to Outlook Drive, transitioning to six feet, extending east to the rear property line. A subsequent site improvement permit (BLD23-05279) was approved by Development Services on December 6, 2023 (**Exhibit C**). The site improvement permit allowed for the construction of ±200 linear feet of rock retaining walls less than four feet in height along with grading to properly address drainage. Together, the two permits allow for the construction of the fence on top of the retaining walls adjacent to the southern property line, as permitted under Reno Municipal Code (RMC) 18.04.809(c)(4).

The Reno City Clerk's Office received an appeal of BLD23-03075 from the adjoining property owner to the south, Michael Powell, on October 31, 2023 (**Exhibit D**). The appeal alleges that City staff made mistakes in reviewing the fence permit and that the permit should not have been issued based on conflicts with RMC standards and requirements. The case went to an administrative appeal hearing on November 14, 2023, and was continued to January 9, 2024, to allow additional

plans and documents to be provided to the Appellant. Prior to the resumption of the administrative appeal hearing, Mr. Powell filed an appeal of BLD23-05279 on December 18, 2023 (**Exhibit E**). Both appeals (BLD23-03075 and BLD23-05279) were considered at the January 9, 2024, administrative appeal hearing. Based upon the evidence and authorities presented (including supplemental materials submitted by Michael Powell – **Exhibit F**), the Hearing Officer found that the City did not abuse its discretion in approving permits BLD23-03075 and BLD23-05279, affirming the City’s decision and denying the appeal (**Exhibit G**). The Appellant has appealed the decision of the Hearing Officer to the Reno City Council.

Alignment with Strategic Plan:

Economic and Community Development

Previous Council Action:

There is no recent Council action relevant to this item.

Background:

The subject site, 2600 Outlook Drive, was developed with a single-family home constructed in 1955. The parcel is located at the southeast corner of Outlook Drive and Belford Road with frontages on both streets. The home is oriented towards Outlook Drive and includes a circular driveway connecting to both Outlook Drive and Belford Road. The property slopes away from Outlook Drive and is bordered by the Last Chance Ditch on the east. The west side of the parcel lies approximately 20 feet higher than the eastern property line. **Exhibit A** provides an aerial view of the subject property.

The owner of 2600 Outlook Drive was cited by the Code Enforcement Division for grading improvements and construction of a fence without required permits on August 3, 2022. On January 26, 2023, a fence permit was submitted to the City to allow for a fabric fence (approximately 150 linear feet) to be constructed atop a two-foot retaining wall (BLD23-03075). The fence was to be four feet within the front yard, extending from the Outlook Drive frontage to the west face of the home, then transitioning to six feet and extending to the eastern property boundary. Development Services was alerted by the adjoining property owner, Michael Powell (Appellant), in May of 2023 that the retaining wall included in the permit was not retaining any soil and was instead a decorative wall. Per RMC standards, fences within the SF-3 district may not exceed four feet within the front yard setback and six feet within the side and rear yard setbacks.

Development Services rescinded the approved fence permit on June 8, 2023, based on the fact that the wall depicted on the plans was not retaining any material onsite. Subsequently, the applicant/owner of 2600 Outlook Drive hired a Nevada-licensed civil engineer and submitted a site improvement permit application (BLD23-05279 – **Exhibit H**) that included a design for a two-foot raised landscape bed along the southern property line, thus requiring a retaining wall. The site

improvement permit plan set included a detailed site and utility plan, grading and drainage plan, an erosion and sediment control plan, and a geotechnical investigation report (**Exhibit I**), along with a rockery retaining wall design prepared by a Nevada-licensed engineer. These plans were reviewed by the Planning, Engineering, and Building Divisions and found to be in conformance with City design and code standards. With the updated design, the proposed fence may be located atop the retaining wall per RMC 18.04.809(c)(4) which states “*where a fence or wall is constructed on top of a retaining wall, the height of such fence or wall shall be measured from the top of the retaining wall.*” Based on the new design and compliance with RMC requirements/standards, BLD23-03075 and BLD23-05279 were approved by Development Services on December 6, 2023.

Discussion:

In the appeal filed with the City Clerk’s Office on February 5, 2024, the Appellant claims that his property (2640 Outlook Drive/APN 018-253-14) will be negatively affected in three ways by the approval of BLD23-03075 and BLD23-05279 and cites four alleged violations of RMC and the City of Reno Public Works Design Manual (PWDM) in the appeal of the Hearing Officer’s decision (**Exhibit J**).

As outlined in the appeal filing, the Appellant claims that existing surface drainage from his property (2640 Outlook Drive) will be blocked, causing erosion on his property and damage to his existing fence. Chapter 2, Section 202.2.2.2 of the PWDM, states that “*surface drainage from any developed area shall not cross any property line except by way of a natural watercourse, major drainage facility, or an approved drainage system within a public storm drain easement, or a permanent surface drainage easement. Historic drainages will require new easement, even if no easement existed before.*” Thus, drainage from the Appellant’s property may not flow across adjoining parcels without a dedicated drainage easement. The approved plans do not propose to alter drainage patterns on the Appellant’s property and include a design that routes drainage from 2600 Outlook Drive through the property to the historic/approved discharge point (Last Chance Ditch), as required per RMC. The drainage design included with the approved plans contradicts the Appellant’s second claim that surface drainage from 2600 Outlook Drive will be directed across the southern property line and onto the Appellant’s parcel, causing erosion to his property and damage to the Last Chance Ditch. To the contrary, the approved drainage design includes a swale that directs drainage away from the Appellant’s property and into the historic/approved discharge to the ditch.

The Appellant’s third claim states that the approval of the fence will create an “*unattractive neighborhood feature*” and that “*hanging shade fabric between posts will be ugly and will be visible from my property as well as Belford Road and Outlook Drive*” in reference to the fence being atop the planned wall, claiming it will negatively affect his property value. While RMC regulates the height and placement of fences, it does not regulate fencing materials, with the

exception of barbed wire, razor ribbon, or razor tape fencing. There are no restrictions defined in RMC that would prevent the use of the fabric material, as proposed.

In addition to the three claims related to negative impacts on the Appellant's property, the appeal cites four violations of RMC and/or the PWD. The first claim is that RMC 18.04.1404 and 18.04.302(e)(2) prohibit fill from being placed within five feet of a residential property line for all land use types. The referenced code sections are part of RMC Article 14 – Residential Adjacency. RMC 18.04.1402 defines the applicability of Article 14 to *“all nonresidential development built on or within 150 feet of any property in a residential zoning district, exempting nonresidential developments that are no greater than three stories in height or ten acres in size and are separated from residentially zoned property by a freeway or major arterial.”* The provisions/requirements of Article 14 are not applicable to 2400 Outlook Drive; the subject property and permits represent a residential use surrounded by residential use/zoning. Residential adjacency standards simply do not apply. The reference to fill being prohibited within five feet of residential property lines for *“all land use types”* is taken out of context. As 18.04.302(e)(2) is part of the Residential Adjacency Standards, the *“land use type”* refers to those uses subject to said standards; commercial, industrial, public facilities, mixed-use, etc.; not residential use types.

The second and third code violations claimed by the Appellant are related to drainage. Specifically, the Appellant cites RMC 18.04.301 and PWD Section 202.2.2.2 Items 1 and 2. RMC 18.04.301 mandates that all grading shall comply with the PWD. PWD Section 202.2.2.2 Item 1 states *“existing surface drainage from adjoining property shall be perpetuated through the development.”* As previously noted, the Appellant makes the claim that the proposed grading at 2600 Outlook Drive will prevent his property from draining across the subject parcel. However, the approved point of discharge from the Appellant's property is to the Last Chance Ditch to the east. There has been no evidence presented by the Appellant to demonstrate that easements in place/exist that would permit drainage from the Appellant's property onto or across the subject parcel. The second claim cites PWD Section 202.2.2.2 Item 2 which states *“surface drainage from a developed area shall not cross any property line.”* The grading and drainage plan included as part of the approved permit depicts that drainage from the 2600 Outlook property will flow into the historic point of discharge, in this case, to the Last Chance Ditch (**Exhibit H**). Grading plans clearly depict the flow line and a swale to prevent any runoff from crossing the southern property line, as required by RMC and the PWD.

The final claim by the Appellant cites PWD 202.2.2.6 which states *“all plans adjacent to or containing an irrigation or water supply ditch shall require the signature of the ditch company on the face of the plans.”* Documentation was submitted by the permittee demonstrating that the Lake Ditch Company did not object to the proposed improvements (**Exhibit K**). The Administrator has determined that this satisfies the PWD requirements and has historically not required a signature on the plans themselves.

There is little to no discretion in building/site permit review. Plans are evaluated in context with RMC and PWDM requirements and standards and must meet all applicable requirements, standards, restrictions, etc. In cases where a deviation exists, it is sometimes possible to vary from standards with a discretionary review (i.e. Major or Minor Deviation, Variance, Conditional Use Permit, etc.). In the case of BLD23-03075 and BLD23-05279, all provisions of RMC and the PWDM are met per the approved plans. There is no discretion on the part of City staff to deny or reject the proposed improvements.

Financial Implications:

None at this time.

Legal Implications:

Legal review completed for compliance with City procedures and Nevada law.

Recommendation:

Staff recommends Council review the letter of appeal and the Hearing Officer's action and affirm, modify, or reverse the Hearing Officer's decision to deny the appeals.

Proposed Motion:

Below are proposed motions with the findings for affirmation, modification, or reversal of the Hearing Officer's decision.

Motion to Affirm Hearing Officer's Decision

(denying the appeal and approving the building permit)

In regard to the appeal of BLD23-03075 and BLD23-05279 (2600 Outlook Drive), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing for this appeal, I move to AFFIRM the denial of the appeal by the Hearing Officer. The City Clerk is instructed to prepare and file an order.

Motion to Modify Hearing Officer's Decision

(partially upholding the appeal and amending the building permit)

In regard to the appeal of BLD23-03075 and BLD23-05279 (2600 Outlook Drive), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing for this appeal, I move to modify the building permit as follows _____. The City Clerk is instructed to prepare and file an order.

Motion to Reverse Hearing Officer's Decision

In regard to the appeal of BLD23-03075 and BLD23-05279 (2600 Outlook Drive), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing for this appeal, I move to reverse the decision of the Hearing Officer and DENY the building permit. The City Clerk is instructed to prepare and file an order.

Attachments:

Exhibit A – Display Map

Exhibit B – Fence Permit (BLD23-03075)

Exhibit C – Site Improvement Permit (BLD23-05279)

Exhibit D – Appeal of BLD23-03075 by Michael Powell

Exhibit E – Appeal of BLD23-05279 by Michael Powell

Exhibit F – Photographs and Supplemental Materials by Michael Powell

Exhibit G – Decision of Hearing Officer

Exhibit H – Approved Site Improvement Plans for 2600 Outlook Drive

Exhibit I – BLD23-05279 Geotech Report

Exhibit J – Appeal of Hearing Officer's Decision by Michael Powell

Exhibit K – Lake Ditch Company Acknowledgement

2600 Outlook Drive Legal Notice

2600 Outlook Drive Revised Legal Notice