

**Excerpt from the
ZONING BOARD OF ADJUSTMENT MEETING
Community Planning & Economic Development (CPED)
250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385
(612) 673-3153 Phone
(612) 673-2526 Fax**

The following actions were taken by the Zoning Board of Adjustment on December 11, 2014.

Board Members: Sean Cahill, Matt Ditzler, John Finlayson, Eric Johannessen, Dan Ogiba, Matt Perry, Dick Sandberg, Jacob Sauflely, Ami Thompson

Committee Clerk: Fatima Porter 612.673.3153

ITEM SUMMARY

Description:

Item # 6 - 1100 University Avenue Northeast (BZZ #6924, Ward 3) (Andrew Liska)

Appeal A: Ray Croaston Jr, on behalf of McDonald's, USA LLC, has appealed the determination of the Zoning Administrator regarding the height of two menu board signs at 1100 University Avenue Northeast.

Action: The Board of Adjustment **denied** the application to appeal the decision of the Zoning Administrator regarding the height of the two menu board signs at 1100 & 1118 University Avenue Northeast.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Sauflely, Thompson

Motion passed

Appeal B: Ray Croaston Jr, on behalf of McDonald's, USA LLC, has appealed the determination of the Zoning Administrator regarding the height of the "Order Here" sign at 1100 University Avenue Northeast.

Action: The Board of Adjustment **denied** the application to appeal the decision of the Zoning Administrator regarding the height of the "Order Here" sign at 1100 & 1118 University Avenue Northeast.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Sauflely, Thompson

Motion passed

Appeal C: Ray Croaston Jr, on behalf of McDonald's, USA LLC, has appealed the determination of the Zoning Administrator regarding the height of the "Drive Thru" gateway sign at 1100 University Avenue Northeast.

Action: The Board of Adjustment **denied** the application to appeal the decision of the Zoning Administrator regarding the height of the "Drive Thru" gateway sign at 1100 & 1118 University Avenue Northeast.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley, Thompson
Motion passed

TRANSCRIPTION

Staff Liska presented the report.

Chair Perry: Thank you Mr. Liska for your presentation. And before we maybe have questions of you, there are three things being appealed but because of the nature of the appeal, I'm assuming that both the appellant and the City as represented by you are viewing this as one appeal. Is that correct?

Staff Liska: Yes. Basically this appeal is measuring from grade, whether we're using natural grade or grade.

Chair Perry: Very good, thanks. Are there questions of Mr. Liska? Mr. Cahill

Board member Cahill: Just clarifying on your point Mr. Chair. Mr. Liska. So the only question before us in interpreting the ordinance which is what's being proposed here? Is whether or not the definition of grade will be used in measuring the sign height or natural grade? Correct?

Staff Liska: That is correct. And again, the Board did approve three of the four variances and the staff member that brought that through is on maternity leave, so we don't have her to lean on. So the Zoning Administrator is determining that we are measuring from natural grade.

Board member Cahill: Thank you.

Chair Perry: You're welcome. Mr. Johannessen.

Board member Johannessen: Thanks for your presentation. Was the location of grade ever made public to the people installing the devices? You noted certain distances from property line, distances from building and property line. Was there ever on a plan that someone said this is the spot of grade, naturally, natural grade?

Staff Liska: The original variance application brought through did require a master sign plan. To date we still have not received a master sign plan. And I think that would be where grade would be shown. We do have building permit plans that did show signage but that is not considered a master sign plan.

Chair Perry: Are there any other questions of Mr. Liska. I see none. Before we have the appellant speak. Thank you very much Mr. Liska. I'm going to just go through some process things because appeals of the Zoning Administrator are not variances and I want to make that point very clear, especially both for the appellant as well as those who might be speaking against this. As I said appeals of the Zoning Administrator are not variances. The board's job

is narrowly defined to determine whether the Zoning Administrator correctly interpreted and administered the current provisions of the zoning ordinance that are the subject of this appeal. Furthermore it's not the board's responsibility to determine whether the zoning ordinance is correct or should be changed. As I said, we're not a policy making body. And reading from some of the testimony that I have and having been on this board and was here in February, I know there's some other issues around this site. And so I want to specifically address that in this statement. In this particular case, we are addressing a narrowly defined technical issue. As board member Cahill just said, this is the Zoning Administrator's determination whether the signs are measured from natural grade as opposed to finished grade, five feet from a building are correct. That's the question before us. The other issues that I know exist around the site are not ones that I will entertain tonight. As a matter of due process the appellant is afforded broad latitude in the testimony they provide to make their case, however since written testimony has been provided for the record, this body will ask the appellant to be respectful of the amount of time they are using in providing their testimony today. Now the same broad latitude in testimony provided applies only to the appellant or the members of the appellant's team. It is not afforded to others testifying who are not the appellant or a member of the appellant's team. If I feel public testimony or board member questions or comments are straying from the aforementioned purpose, I will interrupt the speaker and ask them to address the decision before this body. I'm not trying to be rude but trying to be respectful of the purpose of these proceedings and this particular appeal. So is the appellant present? And would you like to give testimony? If you'd give your name and address for the record please.

Darren Lazan (105 5th Ave S #513): I'm with Landform Professional Services. I represent McDonalds USA, the applicant on the item before you tonight. I do want to thank you for your time tonight. I do want to be respectful of your time tonight, but, I do apologize in advance. I'm going to struggle to be brief because this has turned into an incredibly complicated item over a relatively small margin.

Chair Perry: I'm sorry for interrupting you right off the bat Mr. Lazan; I'm going to give you about ten minutes, maybe fifteen. Please confine your comments to that time frame. Thank you.

Darren Lazan: I'll give it a shot. It may be helpful by way of background just to give a brief overview. Staff did quickly, but this goes project goes back forty years ago, as redeveloped as a commercial site, twenty years ago, reconstructed. In eleven and twelve there was an original PDR (Preliminary Development Review) for a major remodel which is what we're talking about today. When I was before you earlier this year we talked about the major remodel program, that's what the site has undergone recently. February we applied for variances and the staff indicated all variances were approved with the exception of the menu height. We did modify the permit set and modify the sign per that variance request. We went through the process in February of PDR amendment where the document went through that same process as well. There were sign permit applications and permits were approved. There was also an extra review at that time; we'll talk about that a little bit later, of the signs by staff when they were originally flagged as not complying with the variances. We had to supply a packet of information to argue our case. Ultimately staff met and determined that

they did in fact comply. So there were two reviews by staff of the permit application as it relates to the sign heights. Construction commenced this fall, as staff mentioned, there's a stop work order. We responded to the stop work order because we felt it was incorrect. We ultimately removed the sign elements that even staff determined were noncompliant so we could proceed. So there were elements removed from the sign to make sure that we were not in <inaudible> as we move forward. A complete survey was done of all the sign components in the area all the way around by a licensed surveyor. Staff reviewed our responses. They actually rendered a decision at that point and declared the menu boards were ok, that no further action or no enforcement was going to be taken on the menu boards. So I'm very surprised tonight and the last couple of days to see our application modified to add a third request. And that our menu boards now are no longer deemed at no enforcement but in fact are before you with a staff recommendation for denial. So that's another frustration. Again, the stop work order required that the c.o.d gateway and gateway signs were too tall. We had the choice of fixing the signs, appealing or applying for a variance. We chose to appeal. The appeal was filed for those two elements per the staff direction and decision. And now as I said all three seem to be in play, which is unusual for us. It's not unusual in that we've found incredible inconsistency in working with staff over the last few weeks and months to try to get this issue resolved. We submitted very technically precise documents, I have a set here, I'd be more than happy, but I'd blow my ten minutes if I went through them with you. Engineered plans, land survey, certified, spot elevations provided on every spot around these signs. Every piece of curb is spot elevated. Enlarged plans, where it was confusing, so we blew up the plan into a bigger set. Said here's where these signs are going to go, here's what the grade is, here's where the foundation is. Incredible details on where the foundation is, where the anchor bolt sit, how the plate sits on there. All of it incredibly detailed, all thorough. It's important to note that per the minutes in the variance request originally, staff noted, and I confirm, that these signs are constructed, as proposed, as permitted, are exactly the same for the previous variances for both the Hiawatha and Lake Street stores as constructed today for both the Hiawatha and Lake Street stores. So it's consistent with what you've approved in the past, across the board. As I mentioned, we've had five staff reviews of these signs. Original PDR, amended PDR, now granted we don't get a full sign review in those so I'll be fair to staff on those. We have had four variances request where we've discussed these signs in detail and structured these variances. The sign permit review was done and extra scrutiny was done during the sign review of these signs in particular where staff had a meeting to review my argument on the variance interpretations and they were deemed to comply and the permit was issued and construction went forward. All of the issues today come after construction. And I boil this down to basically three primary issues. One is incredibly inconsistent information from staff and from code on how these are measured. I have a long, long, long trail of emails just tell me where you're measuring from. I couldn't get an answer. Modify the sign. I can't modify the sign and guess where you want it. Where are you measuring from? Over and over and over, could not get a straight answer. So, we could not form a working relationship to move forward because we could not get an answer. We received no less than eight definitions of where we were going to be measuring from, either in code, correspondence with the City, staff reports, staff conversations, so on and so forth. Eight, they're all document here on this sheet. Eight very different interpretations on where the signs would be measured from. So that became the challenge in moving forward. So as again, we went through the stop work order process. Even the stop work order today,

varies six inches from the staff report today, over a sign that the max variation is five inches, so even the two staff reports are off by six inches. We have a little bit of an issue with interpreting the code. I can go through that, that's not your job tonight but it does pertain to this in that there is a definition that staff pointed out for natural grade versus grade. And I want to point that out briefly on this exhibit if I can. What I did here, is I did a section through the building. Through the sign through the second drive thru sign and showed all those components there. Grade, as staff called out, for this site as defined in the code is a point five feet; the lowest point between the building and five feet from the building which is 840.0. That point projects all the way through, every one of our sign components are in compliance. Every aspect of the variance application that we filled out, the summary by staff, every component of the variance references grade. We are allowed a variance from grade throughout that entire piece. The applications are in place, as I said, I could go through, I've got all these tabs, I'll be respectful of your time today, but every one of these application components, the summary by staff, everything references grade. So my first argument is we built what we said we were going to build. We measured from where we said we were going to measure, and we complied across the board. The second argument is that, even if we're going to use natural grade as the argument, natural grade is the grade that exist prior to development. Even the staff report today acknowledges that the grade throughout this entire section area hasn't changed. That is the grade. Throughout that entire area, that is the natural grade. We didn't build a berm. I have another exhibit showing what we believe the intent of the ordinance is. Where you build a little retaining wall four feet in the air and you build a twelve foot sign on top of it, you get four free feet. That isn't what happened here. Grades didn't change by more than tenths through this entire area. This is entirely, as the green line, or the dark line on your screen shows, that is natural grade. When you take natural grade at the point where the sign is installed, we comply across the board. Code also calls out a measurement, a term in natural grade, where it says the grade of a site before it's modified, which we comply with, before it's on the berm or as determined by reference of a survey, which we did, we provided a registered land survey of the property to show the existing and proposed grades and that grade did not substantially change. There's also a definition under sign height where it says the grade is measured from a point either at the curb level. Well the curb has a back of curb and a bottom of curb, there's six inches of difference there. We measured grade at the curb, right adjacent to where we installed the sign. If you use that as a measurement, we comply all the way across the board. Only when you measure to ground, which does not have a definition, when you measure all the way down to the bottom of the drive, this far away from where the sign is installed, do you get the numbers that staff comes up with that puts us five inches in the worst case over. Two to three inches in the first sign in that longer section. So, I took the worst case here and detailed it. Only when you go from the very bottom of the drive to the top of the letters, which is where we measure from, do we get staff, and they confirm 10'7, and actually we got another inch out of there, 10'8 on a 10'3. And again, this is not, we believe we argue, 840 is grade. All of our variances reference grade throughout. Not natural grade, grade. Grade is a specific definition in code, that's what we used. Natural grade, if we want to make that argument, is still, this green component as it comes through here. At the point where the sign is installed, the sign is three inches under the maximum allowed height. And that varies by sign, that's zero inches on the gateway, and so forth. Finally, there is, as you had mentioned, some discretion on the part of the Zoning Administrator which I respect, understand and believe is well placed. It's very difficult to

determine what grade is, what grade is going to be used, and how we move forward. And I appreciate the Zoning Administrator has that latitude. There is language in there that says variably determined by <inaudible> or by other information as determined. And I think that's a great component of the code. My problem is in its timing. The time for the Zoning Administrator to make a determination in our mind was in one of those five reviews. Not after construction. It's patently and wholly unfair to walk out on a job site and say, I'm going to use that point, when the sign is up and installed exactly as permitted, exactly as dimensioned, exactly as drawn, exactly as laid out from day one. It doesn't, it's impossible to business in the community if you're going to play roulette every time you install something, and wonder whether the Zoning Administrator is going to determine the height is measured from after it's constructed. So, with that I have my three final arguments. One is that the variance controls the height of the sign. The variance application was clear. That it references, all of the references are from grade. Grade by definition of the code is established in this case as 840. Every one of those components complies just as they do on the two other sites in Minneapolis. In the alternative, if natural grade is determined to be the measure. We would argue that natural grade is defined by the survey that the natural grade in that area did not change. We did not raise the area to build higher signs. It's within tenths of what was originally constructed. Again, we're within inches. The language of the variance says approximate as most of yours do. I could bore you to death with construction practices, about by the time we pour the foundation, put the leveling screws on, get the plate, right the sign, we lose an inch or two, which is why we always say approximate. But again the most important piece is that nothing changed. This is exactly as detailed in the set of plans from day one until today. Nothing changed. So in closing, I guess, we believe, the applicant believes that we did our part in detailing our application. In being totally transparent and clear in what we intended to construct. We were consistent throughout, not only on this site but in two other sites in the community. We meet all reasonable interpretations of the code for height. We also meet the technical interpretation as well. And we ask the Zoning Board of Adjustment to confirm the intent of the variance and allow the constructed condition as planned and approved. And again, I think you mentioned beforehand, I will stand for any questions but as you mentioned beforehand I've kept my comments to this specific issue and respectfully reserve the right to respond if other items are entered into the record.

Chair Perry: Thank you for your testimony Mr. Lazan. Housekeeping item, you had some technical documents that you said that you did not want to go through. And I appreciate that. However, it might be in your best interest to give copies to the clerk, so they are a part of the public record.

Darren Lazan: I could do that. Just for the record this is a complete set of our approved documents. That have all the detailed grading elevations, survey work, all the details for the signage, the foundation, leveling bolts, everything else. This is our current, this is an off shoot of our sign permit that was put together for staff as a master sign plan they referenced, which shows every single sign on the document, every dimension, every component of the signage. This is the same information that was provided during that piece. I think those are the two pertinent ones.

Chair Perry: So if you want to give what copies you have to the clerk. Not right now but before you leave, that would then be part of the public record. Thanks for your testimony. Are there questions for Mr. Lazan? Mr. Sandberg.

Board member Sandberg: I think most of your descriptions here address the order here sign, but, there are also findings by the Zoning Administrator with regard to the menu boards. Do you have anything that you would further like to elaborate on those?

Darren Lazan: So, I did add the gateway to this section drawing. And the same results, it falls in the same category if you interpret from grade or natural grade where the sign is installed it complies. I did include it in this section. This is the gateway piece as opposed to the order here or the drive thru component. I don't have any documents to support the menu board. As I mentioned we were surprised our application was modified to include that because we had previous written confirmation that there would be no enforcement on this item. But that too falls into the same category. If you measure from natural grade or from grade, the sign is under the required six feet. The sign was modified from the last time I was before you folks for the variance, when you denied that height component. A lower sign was ordered, fabricated, delivered and installed. If it matches the plans, it meets the variance. And under those same two definitions meets the height requirement.

Chair Perry: Any other question of Mr. Lazan? I see none. I have a question. I'd like you to elaborate a little bit on your argument that natural grade has not changed. And even if natural grade is used, you're still compliant. Particularly the former that natural grade has not changed.

Darren Lazan: So, natural grade is defined, by code, as the grade of a site before it is modified or by moving earth, adding or removing fill, or installing a berm, retaining wall or other earthwork features. This area was disturbed during construction, but to be honest, identically, the building is where it is, the street is where it is. It's very difficult to change grade in that area. So while curbs were moved, the general grade stayed exactly as the same. Prior to construction, grade left the building at the same elevation, traveled across here, there was a six inch curb that came down. There was a drive thru lane. There was a six inch curb that came up. There was an island. There was a six inch curb that came down. None of that area dramatically changed, less than tenths. So my argument is unlike; so this is by way of example we believe the intent of the ordinance. If prior to construction our grade was down here and we installed retaining walls or berm and stuck our sign on top of that, staff would have a great argument. We modified grade to raise the sign and the grade should be measured from this point down here. It's not the case, this <inaudible> component; that within tenths is exactly what the grade was. So, my argument is this entire line is natural grade. And where the sign is installed, at this location, where it was shown on the plans all along, that measuring point should be determined. And if you get into this one, under natural grade, from the natural grade at the base of the sign where it's installed, carry it across; the sign is three inches under the maximum height.

Chair Perry: The reason why I ask that questions Mr. Lazan is that, I'm sort of curious why you've included that as part of your argument. Because you're appeal is really not about

natural grade. It's that, I don't want to put words in your mouth, but, all the applications, the reviews you went through, referenced grade not natural grade. I'm just wondering why you even took any time to speak to natural grade, when your argument is, that the measurement should be from grade as defined by the City's code.

Darren Lazan: Maybe I moved through that too quickly. Let me back it up, and I apologize. My first argument, I said I had two arguments, my first argument is everything we have references grade. Grade is 840, we comply across the board. My argument in the alternative, should you believe that it should have been natural grade that we still comply, if you use natural grade. Now natural grade is a more complicated argument, so I spent some time drawing it and showing it up. But my first and foremost argument is, every component of our variances references grade. And we meet that definition.

Chair Perry: So before us, our responsibility is to determine whether it's grade or natural grade. Not whether you are compliant with either one of them for that matter. That's not really what's before this board. It's whether grade or natural grade is what should be used to measure sign height.

Darren Lazan: I think that if, I don't mean to present to you you're role as a board, but my request would be, first to determine whether it grade or natural grade. And if it's grade, we comply. If you determine its natural grade, I'd like you to consider our argument for natural grade as opposed to staffs. Because we did not raise the area where the sign is planted, that was the existing grade.

Chair Perry: Thanks for making that request, that's not in prevue of this board when it comes to appeals of the Zoning Administrator. But I understand what you're argument is. Thanks for your testimony too and answering my questions. Is there anyone else that would like to speak in favor of this application? I see no one. Is there anyone that would like to speak against it? Bear in mind that we're dealing with a very narrow technical discussion here.

Robert Riskin (1117 3rd St NE): I live in a contiguous property to the McDonalds. The signage came before this group back in February and was originally denied. That was on our appeal. <End of tape>. Correct. McDonalds came back to the neighbors and the neighborhood to get that final piece approved with some conditions. And the conditions were this memorandum of understanding which is attached to the documents that you all have in front of you. And we're here tonight to say the memorandum of understanding, which is a direct result of the signage being approved, hasn't been followed.

Chair Perry: Can you answer for me how that is relevant to the Zoning Administrator.....<interrupted>

Robert Riskin: Because it has to do with the signage overall.

Chair Perry: Sir if I may. How is it relevant to the question before this body? That the Zoning Administrator properly applied the notion of at grade, I'm sorry, natural grade to measure rather than grade. How is the memorandum understanding germane to this?

Robert Riskin: It's germane because it has to do with McDonald's attitude about doing what they want to as opposed to following the code and the City...<interrupted>

Chair Perry: Mr. Riskin, I'm sorry, I'm going to have to tell you that is not germane at all. McDonalds is...the question before this body has nothing to do with McDonalds "attitude" or anything about McDonalds. The question before this body is whether the Zoning Administrator has properly used the right measurement for measuring the sign height, which is, the Zoning Administrator claims natural grade. That is what we're here for. Not McDonald's attitude, so I'm going to have to cut you off. Do you have something else to offer?

Robert Riskin: The only statement I would make then is we support the administrator's measurement.

Chair Perry: Thanks for coming down and giving testimony.

Robert Riskin: And I would like to leave something as part of the record, permanent record.

Chair Perry: Please do, absolutely, please do. Is there anyone else that would like to speak against this application? Bearing in mind the technical nature that we're dealing with and the narrow question? Yes, sir.

Timothy Kennedy (1121 3rd St NE): I agree with the Zoning Administrator. I'm not sure where he measured natural grade or anything like that, but if McDonalds is claiming that with the piers and all that. McDonalds has to comply with their things. The top of the pier is six inches above grade. So the sign started six inches above grade for the height. So grade being that or whatever, I'm not sure. And I just want to say one other thing about it. They said about the two other places that were approved and that's why they had the signage. They weren't approved for those signages. When we were before this board before. They said they were going to use that for you guys to approve it. They weren't never approved before. The other two places.

Chair Perry: Thank you Mr. Kennedy for coming down and giving testimony. Anybody else like to speak against the appellant's position? Yes, ma'am. Name and address for the record.

Beth Forkenbrock (308 12th Ave NE): My property abuts McDonald's property to the north. I have looked at that for somewhat over forty years. I have lived there long before McDonalds arrived on the scene. And the comment that I would like to make is that, the height of the property between my property and McDonald's property in the very beginning was the same. However they altered, if you want to call this natural, the natural height or whatever, at the very beginning they brought it up two feet. So, in my mind.....

Chair Perry: I'm sorry, the very beginning of what?

Beth Forkenbrock: When they built their original building. When they built their original building, they brought up the grade of their land by about two feet, maybe a bit more. And so my question is, if they're talking about natural grade, at what point are they talking about it. Natural grade before they started building it originally, or at what point? After they put the fill in? I find that a bit confusing.

Chair Perry: Ok. Thanks for coming down and giving testimony. Is there anyone else that would like to speak against the appellant's position? I see no one.

Chair Perry closed the public hearing.

Chair Perry: Board comment. Mr. Ditzler.

Board member Ditzler: Can we ask a question of Mr. Poor or not?

Chair Perry: If you have a question of Mr. Poor, you may ask it.

Board member Ditzler: I think it might be a question for staff before I bother Mr. Poor. Forgive me if it's not completely germane Mr. Perry but do you have any comment regarding the appellant's claim that through the entire process, through whatever documents that they have submitted, that staff continued to reference grade and not natural grade?

Chair Perry: That I think is not a question that is actually pertinent here. I think there is a process. There is a claim that the process is faulty. But that is not the question before us. That's not whether the Zoning Administrator properly applied the code. Mr. Sandberg.

Board member Sandberg: I'd like to do a, I guess a follow up question for staff that hopefully is germane. I think my understanding is maybe that staff's finding of natural grade is related to the public curb on the street right of way. Whereas the appellant is trying to use the curb on their drive thru driveway curb. Is that part of our problem? A misunderstanding of which curb is germane.

Staff Liska: Correct. The exterior curbing would be appropriate for the natural grade. Not the curbing around, associated with the drive thru.

Board member Sandberg: And that's typical procedure for signs throughout Minneapolis?

Staff Liska: Yes.

Chair Perry: Mr. Saufley, Mr. Cahill, Mr. Ditzler. Mr. Saufley

Board member Saufley: Thank you Mr. Chair. Is chapter 520 in the definition of natural grade applicable to signage?

Staff Liska: Absolutely.

Chair Perry: Mr. Cahill.

Board member Cahill: Thank you Mr. Chair. Mr. Chair, I'm going to see if I can't bring this back to what the ordinance is. I'm going to start off with I've heard a lot from the applicant about I've got in consistent information, I've got bad information, I've relied on that information. I point out that information while, certainly frustrating is not for this board. It's a form elsewhere and there's relief elsewhere. My one question, at least presented by staff is the definition of grade to be used in measuring sign or natural grade. I point out the chapter at least cited in the report on chapter three is an incorrect citation. We're looking at chapter 543.80; computation of sign height.

Chair Perry: Could you repeat that Mr. Cahill?

Board member Cahill: Thank you. That is page three of the report. There is an incorrect citation I believe. It is chapter not 546 but chapter 543.80. With that, it reads, sign height shall be calculated as the vertical distance from natural grade. I think this is the interpretation of the plain language of the ordinance. The definitions provided under chapter 520.160 provide definitions both for grade and natural grade. I'll also make the point that there was some wisdom in the drafting where under definitions they placed them side by side. They say grade and underneath that grade comma natural. This is an indication that the ordinance, or at least the law itself, sees a difference between natural grade and grade. Because the language specifically used in 543.80 is natural grade that is the definition we use. I think this is as far as this determination goes today. With that if there's any question if it was inappropriately measured, how that was measured, how that was computed, that is for another forum, another body, or another group of folks to determine. But I think that the plain language of the ordinance stands with given the language of the ordinance itself, there's really no issue here. Thank you.

Chair Perry: Thank you Mr. Cahill. Mr. Finlayson.

Board member Finlayson: Natural grade is the term that the City has used in the fifteen years I've been on this board. They've never used another term. It's always natural grade. It's entirely consistent. I'm in complete agreement that the Zoning Administrator made the correct determination.

Chair Perry: Thank you Mr. Finlayson. Other board comment?

Darren Lazan: Mr. Chair, can I make one distinction because it is relevant. And I understand that the public section is closed, but its specific, it's incredibly relevant to the....

Chair Perry: Unfortunately the public hearing has been closed. And I think I was pretty clear in the beginning of the meeting, how the process worked. Seeing no further board comment...thank you very much Mr. Liska. Mr. Finlayson.

Board member Finlayson: I would move staff recommendation

Chair Perry: There is a motion to adopt staff recommendation and deny the appeal. Is there a second?

Board member Ogiba: Second.

Chair Perry: Mr. Ogiba seconded that. Is there further discussion on the motion before us? Seeing none, will the clerk please call the roll?

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley, Thompson

Motion passed